SUPREME COURT OF THE

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

NO. 284

LOUISIANA EDUCATION COMMISSION FOR NEEDY CHILDREN, ET AL,

Appellants,

versus

BRYAN POINDEXTER, ET AL,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, THREE JUDGE COURT

Leander H. Perez
1806 Commerce Building
New Orleans, Louisiana

Luke A. Petrovich
P. O. Box 200
Buras, Louisiana
Counsel for Appellants

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STATEMENT AS TO JURISDICTION (Rule 13 & 15)

The Appellants, pursuant to United States Supreme Court Rule 13 and 15, file this statement to show the basis upon which the Supreme Court of the United States has jurisdiction on a direct appeal to review the final decree of permanent injunction in question and should exercise such jurisdiction in this case. *(Radio Corporation of America, vs. U. S.*, 341 U.S. 412, 1950.)

OPINION BELOW (Rule 15 1.(a)

The opinion delivered in the lower Court was on the merits and on defendants motion to dismiss after a full trial. Its citation is Civil Action No. 14683, Docket of the Eastern District Court, New Orleans Division, decided and entered March 19th, 1968. The opinion enjoined the enforcement of Act 99 of the 1967 Session of the Louisiana Legislature. A copy thereof is in appendix hereto.

JURISDICTION (Rule 15 1.(b)

The several grounds upon which the jurisdiction of this Court is invoked are as follows:

(i) The proceedings below were in the nature of an amended complaint seeking a temporary and permanent injunction under Civil Rights Act of 1870, 42 U.S.C. 1981-1983, under 28 U.S.C. 1343 (3) and under Rule 15 (d) Federal Rules of Civil Procedure and Section 902 of the Civil Rights Act of 1964 (42 U.S.C. 2000 h-2), restraining the enforcement, operation or execution of Act 99 of the 1967 Session of the Louisiana Legislature on the basis that it violates the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

(ii) The judgment appealed from was dated and entered March 19th, 1968. No rehearing was applied for in the Court below. Notice of Appeal was filed in the United States District Court for the Eastern District of Louisiana, New Orleans Division, on April 19, 1968.

(iii) The Supreme Court of the United States has

jurisdiction to review by direct appeal the judgment and decree complained of by provision of 28 U.S.C. Section 1253.

(iv) The following decisions are believed to sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Radio Corporation of America vs. U.S.*, 341 U.S. 412, (1950); *Ferguson vs. Skrupa*, 372 U.S. 726, 10 L. Ed. 2d 93, 83 S. Ct. 1028, 95 ALR 2d 1347; *Florida Lime and Avocado Growers, Inc. vs. Jacobsen*, 362 U.S. 73 and *U.S. vs. Georgia Public Service Commission*, 371 U.S. 285.

(v) The validity of Act 99 of the Legislature of Louisiana for the year 1967 is involved. This act is found on page 214 through 220 of the official acts of that year and in the Louisiana Revised Statutes under Title 17 as Sections 2971 through 2981. The full text of the act is set forth in the appendix hereto.

QUESTIONS PRESENTED (Rule 15 1.(c)

1) Whether the lower court decision has decreed the provisions of Act of Congress, Public Law 88-352, Title IV, Section 401 (c) as dead letter law or unconstitutional.

2) Whether the lower decision has overruled the prevailing holding in *Griffin vs. County School Board of Prince Edward County*, 239 F. Supp. 560, 566, 1965.

3) Whether Act 99 of the 1967 Louisiana Legislature is unconstitutional.

4) Whether Act 99 of the 1967 Louisiana Legislature

provides aid to educate Louisiana's children on a benevolent, racially neutral policy.

5) Whether the judgment of the lower court prohibits the State of Louisiana from allotting any State aid or assistance to its children for the purposes of combatting juvenile delinquency and crime.

6) Whether the Court erred in granting injunctive relief without plaintiffs alleging and proving any injury or damage irreparable or otherwise.

7) Whether Newspaper Articles and opinions are the best evidence as opposed to direct statements, documents and witnesses.

8) Whether the Court was personally biased and prejudiced against the defendants, Act 99 of 1967 and any Louisiana Legislation which grants financial assistance to school children who may not attend public school.

STATEMENT OF THE CASE (Rule 15 1.(d)

The 1967 Louisiana Legislature enacted Act 99 to declare the public policy of the State of Louisiana in regard to correcting possible juvenile delinquency, school dropouts, juvenile crime, and to aid needy children; to create the Louisiana Education Commission for Needy Children, to implement said Act; to require the Commission to make a survey of the needy children in the State; to authorize the State Board of Public Welfare to employ certain personnel to carry out the provisions of the Act, all to be paid from the public welfare fund and to provide standards for the schools which would be attended by said needy children; to provide suitable

educational opportunities and to base the financial aid scholarships on a graduated family income as set out in the Act.

Certified copy of the Act together with a statement of legislative intent were filed in evidence and copies thereof are in the appendix so that the Court may have before it the actual provisions of the Act and the statement of all its sponsors including Representative John Garrett and Senator E. W. Gravolet to offset newspaper comments, hearsay and partial quotes out of context of these two authors.

The following is the official statement of legislative intent by all of the sponsors filed with the Secretary of State's office and attached to a certified copy of said Act as filed in evidence:

> "During the 1967 fiscal session of the Legislature, we introduced House Bill 161, the primary purpose of which was to combat juvenile delinquency and juvenile crime in this State. This Act was introduced because of the showing by federal statistics that many more crimes are committed by 15-year-old children than by adults and that eighty per cent of all auto thefts are committed by juveniles. Further statistics show the enormous rate of both elementary and secondary school dropouts. It is felt that the large dropout rate is because of the inability of parents to finance an education for their children in a school of their choice. House Bill 161 enacted into law as Act No. 99 provides for scholarship aid to needy children in response to legislative responsibility under the first sentence of section 1, article 12 and section 7.3 of article 18 of the State Constitution. House Bill 161 is in no manner related to or

> connected with the State grant-in-aid law, or Act 147 of 1962. Neither was House Bill 161 introduced or enacted into law to circumvent any order of any Federal Court. No Federal Court order can eliminate the incontrovertible fact shown by the record of the increase in school dropouts experienced in the State of Louisiana. As authors of the bill, we request the Secretary of State to file this joint statement of Legislative intent together with Act No. 99."

A reference to House Bill 161, or said Act 99, will show that all of the sponsors signed the above statement.

As to school dropouts, referred to in the above statement, it is interesting to note a statement of the Supervisor of Census and Child Accounting for the New Orleans public schools which was filed in evidence in connection with the testimony of James Fountain, that of the 147,121 children of school age between 6 and 16, 91,032 attended the New Orleans public schools as of October 11, 1967 and 43,261 attended non-public schools of New Orleans for the 1966-67 school session, thereby leaving 12,828 children of school age unaccounted for, or school dropouts.

On a state level, statistics introduced by the same witness showed a total of 1,082,576 school age children with 789,412 of those children attending public schools and 151,697 attending non-public schools, or a total of 941,109 school age children attending schools, leaving 141,467 school age children unaccounted for and not attending either public or non-public schools.

Under the Louisiana Constitution, Section 1 of Arti-

cle XII, it is the responsibility of the Louisiana Legislature to provide for the education of the school children of the State, including retarded children.

This Court, in its decision in *Poindexter vs. Financial Assistance Comm. E.D.*, La. 1967, 275 F. Supp. 833, 851, 19 L. Ed. (2d) 780, 1968, said it was the responsibility of the Legislature to provide educational opportunities for these unfortunate needy children. The Louisiana Legislature so acted by passing Act 99 of 1967 which is now under attack before this Court.

The cost of operation per child in the public school system of the State of Louisiana, by parishes, ranges from considerably over $400.00 to over $600.00 per child, or an average of $489.05 per child statewide.

No objection could be urged by any interested taxpayer against the State providing a maximum of $350.00 per needy child as a scholarship grant in aid to offset juvenile delinquency and crime. State courts have had occasion to hold that state payments for the support of pupils in private schools where the sum paid was less than the actual cost in similar state institutions, was constitutional, — as in the case of tuition payments to a sectarian industrial school for girls in Illinois, *Dunn vs. Chicago Industrial School*, 280 Ill. 613, 117 N.E. 735.

The federal attorneys contend, and the lower court fell into the error of indicating, that if Act 99 were not held unconstitutional "it would shatter to bits the public school system of Louisiana." Such a statement is impractical and unfounded in fact.

The fact is as shown by statistics filed in evidence

with the testimony of James Fountain that there is a total investment of 1966 in public school sites, building and equipment of $734,794,952.14 in the various parishes and municipalities of the State of Louisiana operating public schools; there were 789,412 children in the public school system of the State of Louisiana in 1965-1966, and that the cost of operations per child in the public school system averaged from over $430.00 to over $700.00, or an average of nearly $500.00 per school child, and a total cost of $387,545,312.71 as of 1965-1966!

Now, in the face of this stupendous figure the federal attorneys contend and the lower court in effect held that scholarship aid to needy children, to avoid juvenile delinquency and crime, with a maximum expenditure of $3½ million would destroy this vast public school system in the State of Louisiana.

In spite of these incontrovertible facts of public record, there stands the broad statement by the lower court that any state tuition grants "assist whites to flee to private schools and unless this system is destroyed, it will shatter to bits the public school system of Louisiana and kill the hope that now exists for equal protection opportunities for all our citizens, white and black. Waiting in the wings is Act 99 of 1967." *(Poindexter vs. La. Financial Assistance Comm., Supra)*

It is submitted that these statements have no relevency and are strictly gratuitous as it may have been intended to appertain to said Act 99 of 1967.

The presiding judges of the lower Court insisted upon trying and rendering judgment in this case in spite of added defendants application for their recusation be-

cause of the personal bias and prejudices of the judges against the added defendants, Act 99 and any Louisiana legislation proporting to aid or assist school children not attending public schools.

Since, in view of the fact that the scholarship grant in aid is limited to needy children and to a sum of $350.00 per needy child and is less than the per child cost of education in any of the parishes of the state, and therefore no interested taxpayer could object, it certainly follows that the United States of America, used as intervenor-plaintiff, has no justiciable controversy with the State of Louisiana because of its enactment of said Act 99 with its provisions for scholarship aid to needy children to prevent further juvenile delinquency and crime.

The only purported evidence offered by the federal attorneys for the United States of America as intervenor, were newspaper clippings and testimony of news reporters identifying their clippings taken from the New Orleans Times-Picayune and States-Item.

Counsel for the added defendants objected to this type of alleged evidence on the ground of rank hearsay and on the further ground that the articles referred to and submitted in book form were, except in very few instances, not direct quotes from any of the authors or supporters of House Bill 161, which became Act 99 of 1967.

That was all the so-called evidence which the federal attorneys offered in this case.

Not one word of evidence was offered as to dam-

age or injury, irreparable or otherwise, as the result of implementation of Act 99 of 1967, was offered by the United States of America as intervenor or by the original plaintiffs.

THE QUESTIONS PRESENTED ARE SO SUBSTANTIAL AS TO REQUIRE PLENARY CONSIDERATION — RULE 15 1. (f)

This case is of importance because the judgment of the lower court in declaring an Act of the State of Louisiana unconstitutional it has in effect decreed the provisions of an Act of Congress, Public Law 88-352, Title IV, Section 401 (c) as unconstitutional or dead letter law and has overruled the holding in *Griffin vs. County School Board of Prince Edward County* 239 F. Supp. 560, 566, 1965. Furthermore, since the enactment of the above Act of Congress and the holding in the above Prince Edward County case this Court has not had submitted to it any briefs on the merits or oral arguments for resolution involving the State of Louisiana and involving the issues herein. Since Congress has spoken on the issues herein relative to State aid to school children in said Civil Rights Act of 1964 it is incumbent upon this Court to consider the lower Court's holding and to resolve same.

Also, the substantial question here is that the lower court holding prohibits the State of Louisiana or any State from allotting State aid or assistance to its children when the children do not attend public schools.

MATTERS IN WHICH IT IS CONTENDED THAT THE COURT ABUSED ITS DISCRETION BY GRANTING THE INJUNCTION SOUGHT (Rule 15 1. (g)

The entire plaintiffs' case and the lower Court decision is based upon the false premise that Act 99 is a standby for Act 147 of 1962 Louisiana legislature which Act 147 was considered by this same Court in *Poindexter, et al. vs. La. Financial Assistance Commission, et al., Supra.*

The added defendant, the Louisiana Education Commission for Needy Children, created by Act 99 of the 1967 Legislature, and its members, were made defendants in this case under most adverse and prejudicial circumstances which boded no good for the real objects and purposes provided by the Louisiana Legislature in the enactment of said Act, — that is to provide limited scholarship aid to needy children to combat school dropouts and juvenile delinquency and crime, which already are too prevalent throughout the Nation.

There is introduced in evidence, by the testimony of James Fountain, statistics from Uniform Crime Reports — 1966, of F.B.I. Director, J. Edgar Hoover, which have a dramatic bearing on this case, and the wisdom, justice and lawfulness of the State legislative policy as provided in Act 99 of 1967. A reference to Hoover's Uniform Crime Report will show that arrests of juveniles increased 54% in 1966 over 1960; that males in the 17 year age group constituted the greatest concentration of arrests for forcible rape in 1966; that 33% of all persons formally charged with robbery were juveniles; that 58% of all persons charged with burglary

were juveniles who were referred to juvenile court jurisdiction; that almost one-half of the total arrests for serious crimes in 1966 were for larceny and 56% of these arrests were of persons under 18; that arrests of young females under 15 rose by 14% in 1966; that 63% of all persons arrested for auto theft in 1966 were under 18; and as a matter of fact, 17% were under 15 years of age; that 54% of police arrests for all criminal acts from 1960-1966 were under 18 age group, and rose 54%; and similar persons involved in police murders included a boy 13 and those under 18 years of age arrested in 1966 for this crime equalled the previous six-year total.

But, notwithstanding these horrifying figures on juvenile delinquency and crime, the Attorney General's office, in the name of the U. S. government, sues to enjoin the implementation of said Act 99, especially designed to give scholarship aid to needy children to keep school dropouts off the streets and to reduce juvenile delinquency and crime under the sole and only political alibi of integration.

Act 99 would simply afford an opportunity of education to those unfortunate children who are school dropouts for reasons beyond their or their parents' control, and whose parents are financially unable to send them to schools of their choice, to afford them an educational opportunity and make of them good and productive citizens instead of delinquents and criminals.

The lower Court, without a hearing and apparently without having read Act 99 of 1967 or knowing its worthy purposes, placed its *curse* upon the Act, in its Reasons for Judgment against a prior Act of the Louisi-

ana Legislature *La. Financial Assistance Comm. vs. Poindexter* et al, La. 1967, 275 F.Supp. 823, 851, 88 S.Ct. —, 19 L.Ed. (28) 780, 1968. The Court evidently established a basis for holding Act 99 of 1967 unconstitutional by not only disagreeing with the criterian established by the U. S. Supreme Court in the Griffin case (377 U.S. 218, (1964)), but claiming that the payment of public funds in any amount through a State commission under authority of State law constitutes unconstitutional state action; and furthermore assists whites to "flee" to private schools; and that unless this system is *destroyed* it will shatter to bits the public school system of Louisiana; and that "waiting in the wings is Act 99 of 1967, designed to fill the vacuum that will result from our injunction against Act 147."

The Court added, "Thus, for a hundred years, the Louisiana Legislature has not deviated from its objective of maintaining segregated schools for white children." But the lower Court did not observe that from 1867, the year of the Fourteenth Amendment, to 1896 and then to 1954, almost 100 years, all the federal courts were in agreement with the Legislature, and that in 1954, in the Brown case, the Court assumed to legislate differently.

The lower Court had previously stated in the first Poindexter case that, "Ten years after Brown, declared policy became undeclared policy. Open legislative defiance of desegregation Court orders shifted to subtle forms of circumvention * * *. But the changes in means reflect no change in legislative ends." There again the lower Court overlooks, or refused to observe that ten years after *Brown*, Congress enacted laws superseding Brown, and these Acts of Congress are the su-

preme law of the land, implementing the Fourteenth Amendment — that is 1964 Public Law 88-352, Title IV, Section 401,(c), plainly recognizing the right of elementary and secondary schools to receive State or other governmental funds, with the proviso that if these funds are predominant in cost of operations, then such schools would be declared public schools; and also Public Law 89-10, the Elementary and Secondary Education Act of Congress of 1965 which absolutely prohibits any U. S. department, executive or judicial, from interfering with the operation of any school system.

The reading of those pertinent provisions of these applicable Acts of Congress to the Court in connection with this case, are necessary to its just determination.

Unfortunately that was the climate and the cloud under which this case had to be tried.

Act of Congress, Civil Rights Act of 1964 Public Law 88-352, Title IV, Section 401 (c) — "Public Schools"

The federal attorneys and the lower Court did not bother to dwell upon the provisions of the Act of Congress (Public Law 88-352, Title IV, Section 401(c)) which plainly recognizes the right of a state or other local governmental agency to provide governmental funds or property to any elementary or secondary education institution, because there Congress provided that if such public funds used in the operation of any elementary or secondary education institution constituted the whole or a predominant portion of the cost of operation of such schools then said schools would be classed as "public schools."

Here we quote verbatum the law as enacted by Congress which the Attorney General's office is sworn to uphold, and not to disregard or treat with silent contempt, because certainly they know of this law. Here we quote paragraph (c) of Section 401 of Public Law 88-352:

> "(c) *'Public school' means any elementary or secondary educational institution,* and 'public college' means any institution of higher education or any technical or vocational school above the secondary school level, provided that such public school or public college is operated by a State, subdivision of a State, or governmental agency within a State, or *operated wholly or predominantly from or through the use of governmental funds or property, or funds or property derived from a governmental source.*" ("Predominant" means having ascendancy over others; superior, as in strength.) (Webster).

Neither can this Court disregard this law and render justice to any cause to which this law is applicable. Nor can it be argued that the above provision was intended to apply to federal grants to such schools. Such statement is untenable in view of the fact that the above provision specifically provides that such "public school" *is operated by a State, subdivision of a State, or governmental agency within a State, or operated wholly or predominantly from or through the use of governmental funds or property, or funds or property derived from a governmental source.*

This sub-section clearly provides for the operation of private schools wholly or predominantly from or through

the use of governmental funds or property. The subject matter of this sub-section is entirely State and subdivisions of the State or governmental agency and no intrepretation can be placed upon this provision so as to apply to federal grants instead of grants from the State or State governmental agency.

Any judgment holding that scholarship aid to needy children to avoid juvenile delinquency and crime as established under Act 99 herein constitutes state support of segregated schools through the use of state funds, and therefore cannot be squared with the Fourteenth Amendment against a state denying any person within its jurisdiction the equal protection of the law, is patently untenable, imaginary and purely false rationalization to serve some personal or ideological ends instead of being in compliance with the clear provisions of Section 401(c) Public Law 88-352, Title IV, Act of Congress of 1964. Such holding is a direct refutation of the Congressional enactment because even though State or State governmental agency funds should find its way in the support of any school in a predominant amount, such school would become a public school under that Congressional enactment, — but, such grants would not be violative of any Fourteenth Amendment prohibition, per se.

The provisions of said Act 99 are so clear and plain as to preclude any different interpretation than carried by its unambiguous provisions, that of providing scholarship aid to the State's needy children to take care of unfortunate dropouts to prevent further and useless juvenile delinquency and crime. If the State has any vestige of police power left, this Act should go unquestioned.

Griffin vs. County School Board of Prince Edward County

It has not been held that any state action at all with respect to a private non-integrated school is repugnant to the 14th amendment to the United States constitution. The United States District Court for the eastern district of Virginia in the 1965 Griffin case held that state action stops with the grant of tuition to the student or his parent, and is not per se such control as to make the conduct of the school state action. *Dartmouth College vs. Woodward*, 17 U.S. (4 Wheat) 518 (1819) and *Guillory vs. Administrators of Tulane University*, 212 F.Supp. 674 (E.D. of La. 1961).

> The Court in the 1965 Griffin case, supra, held: "Payment of a tuition grant for use in a private school is legal if it does not tend *in a determinative degree to perpetuate segregation.* The test is not the policy of the school, but the measure in which the grant or grants contribute to effect the exclusion on account of race. Every exclusive school is not a forbidden school. The part played by the grant in effectuating the exclusion, to repeat, is the pivotal point. It is decisive because the extent of such participation determines whether or not the exclusion is State action — the fundamental question here." 239 F.Supp. 560, 565.
>
> * * *
>
> "Private schools are in no wise outlawed by our decision. They have existed for centuries undominated by the State support, and no reason appears why they cannot still flourish without it. Furthermore, as we have already indicated, State grants may within certain limits still be

paid for use in private schools although they adhere to a policy of segregation. *Our determination is simply that the preponderant support of a segregated school may not be rooted in State action.*" 239 F.Supp. 560, 566.

In the 1965 *Griffin* case, where, under the Virginia law as under the Louisiana law, no color line is drawn for aid, the Court said:

". . . save where the plan is subverted, after the grant has been released, the touch of the State with the child's education in the private school ends. Under the permissible administration of the plan, the mere acceptance of the money by the institution does not transform it into a Virginia instrumentality. 239 F.Supp. 560, 563.

* * *

"Absence of equal protection of the laws is asserted in the contention that there is inequality of enjoyment of the grants. This contention — which is also pressed to destroy the 'freedom of choice' label of the plan — is based on the averment that the Negro has no private school available to him for use of the tuition. The answer is at least two-fold. Initially, there is no proof that private schools are not at hand where the Negro may use the money. Next, such a result would not be the fault of the law; it is an economic, not a constitutional obstruction.

"Over-all, the ultimate and inescable upshot of the plaintiffs' argument is that the State may not provide education except in schools where segregation is proscribed by law or school policy. Not in logic or in precedent do we find the

> position upheld. Neither *Griffin vs. School Board, supra*, 377 U.S. 218, 84 S.Ct. 126, 12 L.Ed. 2d. 256, nor *Griffin et al. vs. Board of Supervisors*, 339 F.2d 486 (4 Cir. 1964) points that way. Decision in each instance was strictly confined to the circumstances peculiar to Prince Edward County and Surry County. Quite clearly, the Courts ventured no expression upon the universal validity of the Virginia tuition law." 239 F.Supp. 560, 564.

The Louisiana statute shows greater distance from state action, with respect to private schools, than does the Virginia statute. For in Virginia, the State Board of Education regulates the application of the grant-in-aid and the teachers in schools whose pupils receive grants are covered by the state pnsion plan for all teachers. Not so in Louisiana.

The distinction between a valid state law, such as ours, and an invalid one is pointed out clearly in *Hawkins vs. North Carolina State Board of Ed., et al*, W.D. N.C. 2057, Ross Relations La. Reporter 745:

> ". . . The case of *Griffin vs. State Board*, 239 F.Supp. 560 (1965), is not apposite *for there the tuition grants were available to anyone without distinction as to reason for not wanting to attend a public school.*
>
> * * *
>
> "The Virginia three-judge district court stated: 'Obviously, no distinction in eligibility is here made on account of race.' Id. at 563. Under the North Carolina statute a determinaton of race must be made, a student is not eligible unless a child of another race attends his assigned school *and* there is no other convenient segre-

> gated school for him to attend. §115-275. This is *contrasted* to the Virginia legislation where a student *could* receive the same grant even if he were assigned to a *segregated* public school initially.

This ruling is in harmony with the Congressional definition of a public school in the Civil Rights Act of 1964, supra.

This Court acted on general principles in *Brown* to forbid state enforced segregation. The Court did not command state enforced integration. Especially did the Court not consider the extent of state action which would require integration. *Congress has done so.* Predominant support has been made the test. This Court has consistently made it clear that where Congress acts within its authority this Court will not substitute its judgment for that of the legislature. Your predecessors have said:

> "It is not the function of a court to determine whether the public policy that finds expression in Legislation of this order is well conceived * * *. Within the field where men may reasonably differ, the Legislature must have its way." *Williams vs. Mayor and City Council of Baltimore*, 289 U.S. 36, 42.

The rule is even stronger when the Congress is concerned. The injunction granted is not consistent with the public policy stated by Congress. We believe the District Court for the Eastern District of Louisiana erred in rejecting the Congressional view and the view of the United States District Court for the Eastern District of Virginia and the Western District of North Carolina.

Injunctive Relief Without Proving Irreparable Injury or Damage

The U. S. Attorney General and his assistants filing the supplemental complaint in the name of the United States against the added defendants nowhere alleged any injury or damage, irreparable or otherwise, to the United States of America or anyone else as a result of the enactment and implementation of Act 99 of 1967, — although this requirement is basic under Rule 65 and under U. S. Supreme Court decisions cited by the added defendant in their motion for dismissal filed October 9, 1967.

In fact the federal attorneys and the lower court made no effort to counter these authorities.

They ignored, and expect this Court to ignore, the established jurisprudence as established by the U. S. Supreme Court through Mr. Justice Holmes in *Massachusetts State Grange, et al vs. Benton, Attorney General of Mass.*, et al (1926), 272 U.S. 525, 527; 47 S.Ct. 189, 190.

There the Supreme Court unanimously held that no Court has jurisdiction to issue injunction against officers of a state clothed with authority to enforce a state law in question unless in a case reasonably free from doubt and when necessary to prevent great and irreparable injury.

In another unanimous decision the Supreme Court through Mr. Justice McReynolds in *Cavanaugh, et al vs. Looney, Attorney General of Texas*, et al, (1919), 39 S.Ct. 142, 143, held:

> "but no such injunction 'ought to be granted unless in a case reasonably free from doubt' and when necessary to prevent great and irreparable injury,"

citing other cases.

To the same effect:

Douglas, et al vs. City of Jeanette, Pa., et al, (1943), 319 U.S. 163; 63 S.Ct. 881; *American Federation of Labor vs. Watson, Attorney General of Florida*, (1946), 327 U.S. 601, 66 S.Ct. 770; *Zellner vs. Lingo, Director of Public Safety of Alabama*, (1963), 218 F.S. 516; *Cameron vs. Paul Johnson, Jr., Attorney, Forrest County, Miss.* (1964), 244 F.S. 853.

Newspaper Articles and Opinions As Best Evidence

The only purported evidence offered by the federal attorneys for the United States of America as intervenor, were newspaper clippings and testimony of news reporters identifying their clippings taken from the New Orleans Times-Picayune and States-Item.

Counsel for the added defendants objected to this type of alleged evidence on the ground of rank hearsay and on the further ground that the articles referred to and submitted in book form were, except in very few instances, not direct quotes from any of the authors or supporters of House Bill 161, which became Act 99 of 1967.

That was all the so-called evidence which the federal attorneys offered in this case.

Not one word of evidence was offered as to damage or injury, irreparable or otherwise, as the result of implementation of Act 99 of 1967, was offered by the United States of America as intervenor or by the original plaintiffs. Certainly, we are entitled to have the federal law on injunction observed by the Court. Injunction can issue only to prohibit or prevent damage, harm or injury, irreparable, and where there is no adequate remedy at law. This is fundamental.

To illustrate the unreliability of newspaper reports, we should like to add as appendix to our brief other instances of unreliability in newspaper reporting by the same newspapers:

1. A Xerox extract of an article in the Times-Picayune of August 15, 1967 where the New Orleans Clerk of Court office had occasion to deny a report of a Times-Picayune court reporter.

2. A correction made by the Times-Picayune October 1, 1967 in the identity of a person at odds with the Metropolitan Crime Commission.

3. A correction of a death report made by the Times-Picayune on its own motion on October 3, 1967.

4. A statement by Attorney General Ramsey Clark in the Times-Picayune, October 15, 1967, denying that he had made statements attributed to him concerning his possible prosecution of New Orleans District Attorney Jim Garrison.

We could cite any number of other clippings to show corrections and denials of misstatements carried by

newspaper reports. For instance, the Court will recall the time when Vice President Hubert Humphrey visited New Orleans and made a speech and was quoted by the New Orleans newspapers as saying that he had enough zip left in him, that if he lived under the conditions of certain minority groups, he would lead a full-sized *revolt* himself. The Vice-President denied that he had made such a statement carried by New Orleans and other newspapers.

Then, too, this Court does not need clippings in the record to remind it of the suit involving millions of dollars filed by former Major General Edwin Walker against the Associated Press, the Times-Picayune Publishing Company and other news media for defamatory statements carried in their columns to the effect that General Walker had come to Oxford, Mississippi to lead a revolt against the U. S. Military under orders of President Kennedy, and it will be recalled, too, that those published reports about General Walker were found to be false by both the trial jury and the appellate courts until certain federal courts reversed the jury awards on technical grounds.

So, all in all, of what evidentiary value are newspaper clippings?

It will be recalled, too, that the newspaper reporters whose articles were carried in these newspapers and who testified to identify said articles were shown to be biased and prejudiced, by the testimony of James Fountain who said that two of these reporters personally told him that they were uncompromisingly against House Bill 161 which became Act 99, and that it was a bad bill.

It is a matter of fact, too, that the same New Orleans newspapers frequently editorialized against House Bill 161 and printed cartoons ridiculing and misrepresenting the provisions of the bill.

As against this "newspaper clipping" evidence offered by the federal attorney there stands of record in this case the official statement by all the sponsors of House Bill 161, including Senator Gravolet and Representative Garrett, which absolutely belies the newspaper articles and hearsay statements of their writers.

In his ruling that such newspaper clippings were admissible, the presiding Judge of the lower Court referred to the "St. Helena" case in which similar newspaper clippings were offered in evidence. But, it must be pointed out that the record in that case will disclose that no objection was made by counsel for the defendant to such newspaper offerings as evidence, whereas, in this case, objection was timely urged to such alleged evidence. Under the circumstances, how can the introduction of newspaper clippings in the St. Helena case serve as a precedent against defendants in this case, in spite of their timely and proper objection? Legal proceedings should be made of sterner stuff! !

We submit that the Court should give no credence to these newspaper clippings as evidence and if the court so holds, in accordance with the rules of evidence, then there isn't a scintilla of evidence of record offered by the United States of America as intervenor or by the principal plaintiffs in this case.

In the original *Poindexter vs. La. Financial Assistance Commission for Negro Children*, E.D., La. 1967, 275

F.Supp. 833, 851 88 S.Ct. —, 19 L.Ed. 2d. 780, 1968 the trial court ruled that newspaper articles would be admitted subject to counsel's objections and that a ruling would be made on this point in the opinion on the merits. Although the lower Court made extensive use of these newspaper articles in its final opinion, no ruling on counsel's objection was made.

The earliest permissible use of writings without the appearance of the author as an exception to the heresay rule is found in *Morris vs. Harmer's Heirs' Lessee*, 7 Pet. 553 (1833). At page 558, Justice Story speaking for the Court stated:

> "All evidence of this sort must be considered as mere hearsay; and certainly, as hearsay, it is of no very satisfactory character. *Historical facts*, of general and public notoriety, may indeed be proved by reputation; and that reputation may be established by historical works of known character and accuracy. But evidence of this sort is *confined in a great measure to ancient facts, which do not presuppose better evidence in existence;* and where, from the nature of the transactions, or the remoteness of the period, or the public and general reception of the facts, a just foundation is laid for general confidence. See 1 *Starkie's Evid. pl. 1, sec. 50 to 44, p. 60 to 64; 1 Starkie's Evid. pl. 2, sec. 55, pp. 180, 181.* But the work of a living author, who is within the reach of process of the court, can hardly be deemed of this nature. He may be called as a witness. He may be examined as to the sources and accuracy of his information; and especially if the facts which he relates are of a recent date, and may be fairly presumed to be within the knowledge of

> many living persons, from whom he has derived his materials; there would seem to be cogent reasons to say that his bok was not, under such circumstances, the best evidence within the reach of the parties."

Subsequently in *Dallas County vs. Commercial Union Assurance Co.*, 286 F.2d 388 (5th Cir. 1961) the Court permitted the introduction into evidence of a 58-year old newspaper account of a fire in the tower of a courthouse to show that char was the result of an old fire rather than recent lightening. Not until *Hall vs. St. Helena Parish School Board*, 197 F.Supp. 649 (Ed. La. 1961), affirmed 1961, 368 U.S. 515, do we find the use of newspaper articles to prove a fact of current happening. It should be noted that the newspaper articles were admitted in the *Hall* case without objection from opposing counsel. Significantly, the opinion cites no authority for their use as evidence. In *United States vs. Louisiana*, 225 F.Supp. 353 (1963) we again find the Court permitted the introduction of 42-year old newspaper accounts of the proceedings of the 1921 Louisiana Constitutional Convention. The *Hall* case stands out as the only example of the use of current newspaper articles to prove facts at issue. None of the scholarly reasons enumerated in the *Dallas County* case were applicable to the *Hall* case nor are they applicable to the case before this Court. The legislators and the newspaper reporters were not shown to be unavailable. Thus, the newspaper articles were improperly admitted.

To date there is no ruling contrary to these decisions.

On the other hand, the record is replete with evidence

of the cause of dropouts of thousands of school children, of the absolute need for scholarship aid to thousands of needy children in Louisiana to take school dropouts off the streets, and to avoid juvenile delinquency and crime, and that the funds provided by Act 99 would take care of approximately 15,000 of such needy children. If the federal attorneys, in the name of the United States, can intervene successfully in a case of this nature and have the federal court to hold that a State of the Union cannot provide for its deprived needy to avoid juvenile delinquency and crime to add to the Nation's bitter experience in this area, the end result will be the absolute destruction of State and constitutional government.

There was submitted of record an affidavit by the Director of the State Welfare Department showing that several thousands of the state's needy children already have been helped by State scholarship aid from welfare funds; that one of these graduates received an appointment to West Point; one graduated from college in engineering where he made the Dean's list; another was chosen as the outstanding student teacher after graduating from college; one is a college professor now working on his Ph.D. and others of these Welfare Department assisted pupils are now doing graduate work in law, social work and education, and several others are now in the military service. Will the federal attorneys bring a suit against this laudatory and strictly lawful state welfare scholarship aid to others of her needy school children to further illustrate the helplessness of an erstwhile sovereign state against overambitious selfish federal political oligarch? Said Act 99 is just an outgrowth of this precedent and custom

of the State Welfare Department, as shown by its Director's affidavit on file as evidence in this case.

All of this beneficial state work is a far cry from the stock phrase used by federal attorneys to interfere with State affairs when they say that this Act was enacted for the purpose of maintaining a racially segregated educational school system in Louisiana with state support. This is nothing short of ridiculous in view of all the above evidence, including the statistics showing the enormity of the state public school system, as compared with the provisions of this Act.

Motion To Recuse Trial Judges

The defendants-appellants filed a motion to recuse the presiding trial judges under Title 28 Section 144, U.S.C. The pleading and argument were filed in this Court on motion for leave to file petition for writ of prohibition entitled, "Louisiana Education Commission for Needy Children, et al versus United States District Court in and for the Eastern District of Louisiana, New Orleans Division, et al, No. 764 Misc. of the docket of the Supreme Court of the United States and is referred to herein and made part hereof as though set out herein in extenso.

CONCLUSION

It is suggested that the Court find that Act 99 of 1967 Session of the Louisiana Legislature simply creates a State commission to distribute welfare funds to needy children, to take care of school dropouts in aid of state policy to prevent or reduce juvenile delinquency and juvenile crime.

There is no federal law which prohibits a state from exercising the right to provide scholarship aid to its needy children to afford them educational opportunities in schools of their choice, outside the State public school system from which said needy children dropped out, and thereby reduce juvenile delinquency and juvenile crime in the state.

Therefore, the intervention of the United States of America and its demands for injunction against the State commission created by Act 99 of 1967 should be denied, said Act 99 should be held to be constitutional, and the intervention and main demand against the added defendants be dismissed.

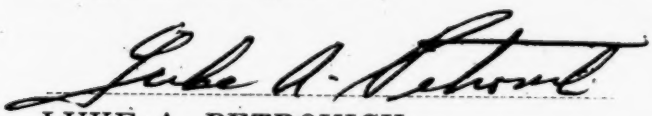
It is respectfully submitted that this Court has jurisdiction of this appeal under Sec. 1253, Title 28, United States Code; that the questions presented are so substantial as to require plenary consideration under Rule 15, 1(f) of the rules of this Court; and that the Court

ow abused its discretion by granting the injunction
ght by complainants.

Respectfully submitted,

LEANDER H. PEREZ
1806 Commerce Building
New Orleans, Louisiana
Telephone JA 2-1346

LUKE A. PETROVICH
P. O. Box 200
Buras, Louisiana
Telephone 657-8268



LUKE A. PETROVICH

Attorneys for The Louisiana
Education Commission for Needy
Children, et al

CERTIFICATE OF SERVICE

I, Luke A. Petrovich, one of the Attorneys for the Louisiana Education Commission for Needy Children, et al, appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 10th day of July, 1968, I served copies of the foregoing Jurisdictional Statement to the Supreme Court of the United States upon parties hereto by mailing copies thereof to the attorneys listed below by United States Mail, first class, (air mail where applicable) postage prepaid.

Solicitor General
Washington, D.C., 20530
For the United States of America,
Plaintiff-Intervenor.

Hon. Louis Lacour
U.S. Attorney
500 St. Louis Street
New Orleans, Louisiana
For the United States of America,
Plaintiff-Intervenor.

Hugh W. Fleischer
Attorney, Dept. of Justice
1723 Masonic Temple Bldg.
New Orleans, Louisiana
For the United States of America,
Plaintiff-Intervenor.

A. P. Tureaud, Esquire
A. M. Trudeau, Esquire
1821 Orleans Avenue
New Orleans, Louisiana
Attorneys for Bryan Poindexter and other minors, original plaintiffs.

Charles H. Jones, Jr., Esquire
10 Columbus Circle
New York, New York
Attorneys for Bryan Poindexter and other minors, original plaintiffs.

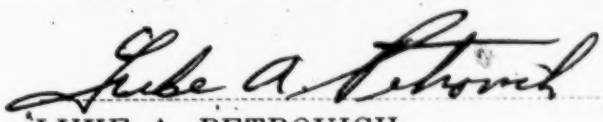
Cy Courtney, Esquire
National Bank of Commerce Bldg.
New Orleans, Louisiana
Attorney for Mrs. Thelma Deamer, et al, defendant-intervenors.

Richard Cadwallader, Esquire
Louisiana National Bank Bldg.
Baton Rouge, Louisiana
Attorney for Mrs. Thelma Deamer, et al, defendant-intervenors.

Signey J. Parlongue, Esquire
National Bank of Commerce Bldg.
New Orleans, Louisiana
Attorney for Garden District Academy.

Walter E. Doane, Esquire
Room 205, Southern Marine and Aviation Building
New Orleans, Louisiana

Attorney for Ninth Ward Elementary School and Armond J. Duvio and Carrollton Elementary School Association, defendants.



LUKE A. PETROVICH
Attorney at Law
P. O. Box 200
Buras, Louisiana

APPENDIX "A"

HOUSE BILL NO. 161

BY: MESSRS. GARRETT, D. H. MORGAN, BRANTON, SCHOENBERGER, STINSON AND WOMACK AND SENATORS GRAVOLET, BROWN, FOLKES, JONES, MOORE AND MONTGOMERY

AN ACT

To declare the public policy of the State of Louisiana in regard to correcting possible juvenile delinquency, school dropouts, juvenile crime, and to aid needy children:

ACT 99

ORIGINATED

IN THE

HOUSE OF REPRESENTATIVES

/s/ W. CLEGG COLE
Clerk of the House of Representatives

Received by Secretary of State this 19th day of June, 1967

/s/ WADE O. MARTIN, JR.
Secretary of State

Rec'd by the Governor
June 6, 1967 at 11:05 AM
/s/ D. ANDRIES

ACT 99

HOUSE BILL NO. 161

BY: MESSRS. GARRETT, D. H. MORGAN, BRANTON, SCHOENBERGER, STINSON AND WOMACK AND SENATORS GRAVOLET, BROWN, FOLKES, JONES, MOORE AND MONTGOMERY

AN ACT

To declare the public policy of the State of Louisiana in regard to correcting possible juvenile delinquency, school dropouts, juvenile crime, and to aid needy children; to create the Louisiana Education Commission for Needy Children; to provide for the membership of said Commission; to define the duties, powers and function of said Commission; to authorize said Commission to approve financial aid scholarships to children attending private non-sectarian elementary or secondary schools located in this state; to prescribe standards of eligibility for receipt of financial aid scholarships; to provide a maximum amount for each financial aid scholarship; to prescribe a time limit within which to approve or disapprove financial aid scholarship applications; to prescribe a time limit within which approved financial aid scholarship applications must be submitted to the State Board of Public Welfare; to require the State Board of Public Welfare to pay approved financial aid scholarships from the Public Welfare Fund in the amount and manner prescribed by said Commission; to prescribe that it shall be unlawful for any applicant to make application for or receive the benefits of a financial aid scholarship knowing that the recipient was not a bona fide student at a private non-sectarian elementary or sec-

ondary school and to prescribe penalties therefor; to require said Commission to make an annual survey of the needy children in this state who are not receiving financial aid scholarships and to require that the survey be submitted to the State Board of Education and the various parish and city school boards; to require the State Board of Public Welfare to pay the operating expenses of said Commission; to authorize the State Board of Public Welfare to employ certain personnel to carry out the provisions of this Act and to pay same from the Public Welfare Fund; to declare that the several provisions, sentences, sections, clauses, phrases or other parts of this Act shall be severable and distinct.

Be it enacted by the Legislature of Louisiana:

Section 1. Definitions

As used in this Act:

(1) "Recipient" shall mean any child who is receiving a financial aid scholarship, or for whom application for a financial aid scholarship is made to attend a private nonsectarian elementary or secondary school located in this state.

(2) "Applicant" shall mean any parent, guardian or person standing in loco-parentis to any child for whom application is made for a financial aid scholarship.

(3) "Dependent" shall be each person dependent upon and receiving his or her chief support from the family income including parents, guardians or persons standing in loco-parentis and children under 18 years of age and persons over 18 years of age if such persons over 18 years of age are incapable of self-support because physically defective or if such person over 18 years of age is a full time

student at any elementary or secondary school or recognized college or university.

(4) "Income" shall mean all net income as would be computed for state income tax purposes from whatever source received by all applicants.

(5) "Classification" shall mean that position on the income and dependent chart contained in Section 5 of this Act showing the maximum amount of the financial aid scholarship available to any recipient on the basis of income and number of dependents of the family unit in which said recipient is a member.

(6) "Parent" shall mean any parent, guardian or person standing in loco-parentis to a child.

(7) Wherever the words "private elementary and secondary schools" appear in this Act, in connection with financial aid scholarships, they shall mean "private non-sectarian elementary and secondary schools."

(8) Wherever the words "private non-sectarian elementary or secondary schools" appear in this Act they shall mean private non-sectarian elementary or secondary institutions of learning having a minimum of 90% of the teachers teaching therein certified.

Section 2. That the Legislature of Louisiana, mindful of the increase in juvenile delinquency, school dropouts and juvenile crime rates; and mindful that the parent, not the State of Louisiana, shall be the determining force which shall decide on the type of education ultimately received by the child; and mindful of the fact that many parents enroll their children in public education facilities even though they have dispositions or considerations against doing so, because they lack the finances which would enable them

not to do so; and mindful that such dispositions and considerations are passed from the parent to the child, resulting in possible juvenile delinquency, school dropouts and juvenile crime, hereby declares that it is the policy of this state to provide financial aid scholarships to needy children enrolled in private non-sectarian elementary and secondary schools located in this state whose parents choose not to enroll said children in the public education facilities of this state because of such dispositions and considerations.

Section 3. That to carry out the constitutional mandate contained in Article XVIII, Section 7, of the Constitution of Louisiana, there is hereby created the Louisiana Education Commission for Needy Children, hereinafter sometimes referred to as "Commission," which shall be composed of the Lieutenant Governor, the Secretary of State, and the Treasurer, all exofficio. No compensation shall be paid to any member of said Commission for serving thereon, but said members shall be allowed their actual expenses necessarily incurred in the performance of Commission business.

Section 4. That the Commission shall have authority to adopt such bylaws, rules and regulations for the orderly transaction of its own business as it may deem necessary and appropriate, not inconsistent with the provisions of this Act, and shall select from its own members a Chairman and a Vice-Chairman, the latter to act as Chairman in the absence of the elected Chairman.

Two members of the Commission shall constitute a quorum for the transaction of business, and meetings of said Commission shall be held upon call by the Chairman or Vice-Chairman at such time and place as may be designated after notice to the other members.

The Commission shall have authority to select, employ

and fix the compensation of a Director, who shall be the chief executive officer of the Commission, and a Secretary, whose duty it shall be to preserve a record of all business transacted by the Commission and to perform such other duties as the Commission may designate. The Commission may appoint, retain and discharge such legal, secretarial, clerical and other personnel as it may consider necessary and requisite for the efficient transaction of its business, and shall have authority to fix the compensation of such personnel not inconsistent with the constitutional provisions pertaining to Civil Service and the competent rules and regulations adopted pursuant thereto.

Section 5. That pursuant to the power and authority herein conferred, the Commission is authorized and empowered:

A. To approve financial aid scholarships for needy children attending private non-sectarian elementary and secondary schools.

B. To prescribe standards, within the limitations hereinafter imposed, for qualification for such scholarships, which standards shall be as hereinafter set forth.

(1) Recipient* must be eligible under the laws of the State of Louisiana for admission to public schools within the public school system.

(2) Applicant must furnish satisfactory evidence of admission of Recipient to a private non-sectarian elementary or secondary school in this state.

(3) Applicant must furnish the Commission with a sworn statement of the annual family income of the family of which the recipient is a member. The sworn state-

* As is appears in the enrolled bill.

ments of annual family income submitted in accordance with this Section shall not be subject to the public records law of the State of Louisiana but shall be made available to the Legislative Auditor or members of his staff for the purpose of auditing the records of the Commission and shall be made available to elected officials of the State of Louisiana for their examination.

(4) Applicant must furnish the Commission with a sworn statement showing the total number of dependents on the family income.

C. To determine the amount of the financial aid scholarship to be made available for the benefit of each recipient, provided that the amount of the financial aid scholarship shall be $350.00 per school year or the amount shown in the table of financial aid scholarship maximums based on family income and dependents in C (1) below or the actual obligation incurred by the applicant, whichever is the lesser.

(1) The maximum amount of any financial aid scholarship shall be based on family income and dependents as shown in the following table:

	DEPENDENTS						
INCOME	1	2	3	4	5	6	7 or More
Below - 4000	350	350	350	350	350	350	350
4000 - 4500	330	350	350	350	350	350	350
4500 - 5000	300	330	350	350	350	350	350
5000 - 5500	270	300	330	350	350	350	350
5500 - 6000	240	270	300	330	350	350	350
6000 - 6500	210	240	270	300	330	350	350
6500 - 7000	180	210	240	270	300	330	350
7000 - 7500	150	180	210	240	270	300	330
7500 - 8000	120	150	180	210	240	270	300
8000 - 8500	90	120	150	180	210	240	270

8500 - 9000	50	90	120	150	180	210	240
9000 - 9500	0	50	90	120	150	180	210
9500 - 10000	0	0	50	90	120	150	180
10000 - 10500	0	0	0	50	90	120	150
10500 - 11000	0	0	0	0	50	90	120
11000 - 11500	0	0	0	0	0	50	90
11500 - 12000	0	0	0	0	0	0	50

D. To prescribe standard forms of applications for financial aid scholarships and to require that such applications be submitted under oath or affirmation by a parent of any child for whom application is made.

E. Each application for a financial aid scholarship shall specify the school year, or portion of the school year, for which the financial aid scholarship is requested, but in no event shall a financial aid scholarship be granted for a period of time in excess of one school year.

F. No recipient shall be eligible to receive a financial aid scholarship under the provisions of this Act if said recipient is attending a public school or is receiving financial assistance from any other State source for attendance at a private non-sectarian elementary or secondary school, except assistance in the form of textbooks, transportation and school lunches.

G. No recipient shall be eligible to receive a financial aid scholarship unless said recipient is a bona fide enrollee in regular attendance, unless absent because of illness or for other reasonable causes, at a private non-sectarian elementary or secondary school located in this state.

Section 6. That the Commission shall approve or disapprove all financial aid scholarship applications within thirty (30) days of receipt of application.

Section 7. That the Commission shall, at least five

(5) days prior to the beginning of each month, submit to the Board of Public Welfare a list of approved financial aid scholarship applications and the amount of each financial aid scholarship so approved.

Section 8. That the Board of Public Welfare shall pay from the Public Welfare Fund established by R. S. 47:318, as amended, out of said Fund in excess of requirements for payment of Old Age Assistance and other welfare purposes as provided in Schedule 56 of House Bill No. 40 of the 1967 fiscal session of the legislature the financial aid scholarships approved and submitted in accordance with Section 7 above in the amount prescribed by the Commission, provided, that the cumulative total of all scholarships and state financial aid to recipients to attend private non-sectarian elementary or secondary schools paid during any fiscal year out of sales tax or any other revenues shall not exceed $3,500,000. Such payment shall be made to the school attended by the recipient, for his account as directed by the Commission.

Section 9. That it shall be unlawful for any applicant to make application for or receive the benefits of a financial aid scholarship knowing that the recipient was not a bona fide student at a private non-sectarian elementary or secondary school during the period for which the financial aid scholarship is granted, and it shall be unlawful for any applicant to swear falsely to any item contained in Section 5 of this Act. Any person violating this Section shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment in the parish jail for not more than one year or by a fine of not more than Five Hundred ($500.00) Dollars, or by both such fine and imprisonment.

Section 10. That the Commission shall, on or before

December 31 of each year, make an annual survey of the number of needy children who would fall within the scope of C (1) above if they received financial aid scholarships, but who do not receive financial aid scholarships, attending private non-sectarian elementary and secondary schools within the area of each parish and city school system. The name of each private non-sectarian elementary and secondary school in each such area attended by needy children who are not receiving financial aid scholarships and the number of needy children not receiving financial aid scholarships in each such private non-sectarian elementary and secondary school shall be submitted to the State Board of Education and to each parish and city school board prior to the ensuing January 15 of each year.

Section 11. That the Board of Public Welfare shall pay from the Public Welfare Fund established by R. S. 47:318, as amended, the actual operating expenses of the Commission, not to exceed $5,000 per month, on statements issued by the Commission; and the Board of Public Welfare is hereby authorized to employ the necessary personnel to carry out the provisions of this Section and of Section 8 of this Act and to pay the salaries of such personnel and other necessary expenses from the Public Welfare Fund established by R. S. 47:318, as amended, in an amount not to exceed $50,000 per year.

Section 12. That the several provisions, sentences, sections, clauses, phrases or other parts of this Act shall be severable and distinct, and if any provision, sentence, section, clause, phrase or other part of this Act shall be held by any Court to violate any of the provisions of the Constitution of the State of Louisiana or of the United States of America, such decision shall not be construed as invalidating the entire Act, and the Legislature of the State

of Louisiana would have passed this Act without said provision, sentence, section, clause or phrase.

/s/ Vail M. Delany
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

/s/ C. C. Aycock
LIEUTENANT GOVERNOR
AND PRESIDENT OF
THE SENATE

/s/ John J. McKeithen
GOVERNOR OF THE STATE
OF LOUISIANA

APPROVED: June 15, 1967

STATEMENT OF LEGISLATIVE INTENT

During the 1967 fiscal session of the Legislature, we introduced House Bill 161, the primary purpose of which was to combat juvenile delinquency and juvenile crime in this State. This Act was introduced because of the showing by federal statistics that many more crimes are committed by 15-year-old children than by adults and that eighty per cent of all auto thefts are committed by juveniles. Further statistics show the enormous rate of both elementary and secondary school dropouts. It is felt that the large dropout rate is because of the inability of parents to finance an education for their children in a school of their choice. House Bill 161 enacted into law as Act No. 99 provides for scholarship aid to needy children in response to legislative responsibility under the first sentence of section 1, article 12 and section 7.3 of article 18 of the State Constitution.

House Bill 161 is in no manner related to or connected

with the State grant-in-aid law, or Act 147 of 1962. Neither was House Bill 161 introduced or enacted into law to circumvent any order of any Federal Court. No Federal Court order can eliminate the incontrovertible fact shown by the record of the increase in school dropouts experienced in the State of Louisiana.

As authors of the bill, we request the Secretary of State to file this joint statement of Legislative intent together with Act No. 99.

/s/ John S. Garrett
Rep. John S. Garrett

/s/ Rep. D. H. Morgan
Rep. D. H. Morgan

/s/ Parey P. Branton
Rep. Parey P. Branton

/s/ H. B. Schoenberger
Rep. H. B. Schoenberger

/s/ Ford Stinson
Rep. Ford Stinson

/s/ Lantz Womack
Rep. Lantz Womack

/s/ E. W. Gravolet, Jr.
Sen. E. W. Gravolet, Jr.

/s/ Charles M. Brown
Sen. Charles M. Brown

/s/ W. D. Folkes
Sen. W. D. Folkes

/s/ Howard M. Jones
Sen. Howard Jones

/s/ Danny Roy Moore
Sen. Danny Roy Moore

/s/ Harold Montgomery
Sen. Harold Montgomery

Received
Jun 26 8:57 AM '67

Wade O.Martin, Jr.
Secretary of State

APPENDIX "B"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

FILED: March 19, 1968

BRYAN POINDEXTER, ET AL. :
vs : No.14,683
LOUISIANA FINANCIAL ASSISTANCE :Civil Action
COMMISSION, ET AL. : Section A

Michael Davidson, Charles Jones, and
A. P. Tureaud,
Attorneys for Plaintiffs

Hugh W. Fleischer and Joseph Ray Terry,Jr.,
of the United States Department of Justice,
Attorneys for Plaintiff-Intervenors

Leander H. Perez, Sr., and Luke A.Petrovich,
Attorneys for the Louisiana Education
Commission for Needy Children

Richard C. Cadwallader and D. F. "Cy"
Courtney,
Attorneys for Parents and Directors of
Four Non-Sectarian Negro Schools in
Orleans Parish

Samuel I. Rosenberg,
Attorney for Orleans Parish School Board

Before WISDOM and AINSWORTH, Circuit Judges,
and CHRISTENBERRY, District Judge.

WISDOM, Circuit Judge:

The free lunches and textbooks Louisiana Provides all children in public and private schools are the fruits of a benevolent racially neutral policy. But Louisiana's tuition grants to children attending private

schools are the product of the State's traditional racial policy of providing segregated schools for white children. Act 99 of 1967, now before us, followed Act 147 of 1962, which replaced Act 3 of the Second Extraordinary Session of 1960, which in turn replaced Act 258 of 1958, the legislature's first, and unsubtle, system of grants-in-aid.[1] In each succeeding act the scheme became more subtle, the language more sophisticated. But, as the Court said in Lee v. Macon County Board of Education, M.D.Ala. 1967, 267, F.Supp.458, 477, in discussing a parallel series of tuition grants in Alabama: "the present statue was born of the same effort to discriminate against Negroes, and was designed to fill the vacuum left by this Court's injunction against the [earlier] tuition statute." The purpose of Act 99 of 1967, like the purpose of its predecessors, is to give state aid to private discrimination. With each new scheme of tuition grants, the State nourished segregated schools which could not have come into existence or have continued without the nourishment provided under the earlier discriminatory schemes. The continuing effect is to endanger the public school system and equal educational opportunities for Negroes. Such legislation tends to undermine the not inconsiderable progress made in this state toward avoiding the division of our people into two implacably hostile groups.

Act 99 must go the way of its predecessors. Its "unlawful end and necessary effect" is "to establish and maintain a system of segregated schools for white children, in violation of the equal protection clause." Poindexter v. Louisiana Financial Assistance Comm'n, E.D. La. 1967, 275 F.Supp.833,851 Poindexter II).[2]

I.

August 25, 1967, this court held Act 147 of 1962, the Louisiana grant-in-aid statute unconstitutional and enjoined the Louisiana Financial Assistance Commission from carrying out the provisions of the Act. September 1, 1967, the United States, as plaintiff-intervenor in the original cause, moved to file a supplemental complaint adding the Louisiana Education Commission for Needy Children and its members as defendants. The complaint asks that Act 99 of 1967 be declared unconstitutional and that the defendants be enjoined from carrying out the Act. We granted the plaintiff-intervenor's motion to file a supplemental complaint and, after a hearing, issued a temporary order restraining the defendants from "providing directly or indirectly any financial or other material support to any private school or any student attending a private school." We allowed the Educational Commission to process applications pending our determination of the merits of the supplemental complaint.[3]

The defendants objected to our entertaining the plaintiff-intervenor's supplemental complaint after entry of a final decree in the original cause. One of the grounds of objection was that the Supreme Court, before which an appeal from our judgment in Poindexter II had been taken, might decide that the judgment was not final and thus refuse to entertain that appeal until our action on the supplemental complaint. This argument fell of its own weight when the Supreme Court affirmed this court's judgment, per curiam, January 15, 1968. Louisiana Financial Assistance Comm'n v. Poindexter, 1968, U.S. , 88 S.Ct. , 19 L.Ed. 2d 780.

The defendants assert that the general rule is that no additional complaint may be filed in a proceeding after entry of a final decree. Rule 15(d) contains no such limitation, but gives the court discretionary power to permit supplementary pleadings alleging events that occurred after filing of the original complaint. See generally 1A Barron & Holtzoff, Federal Practice and Procedure § 455 (Wright ed. 1960). Unquestionably the supplemental complaint made sufficient allegations to bring it within the purview of Pondexter II. And the Order of this court of August 25 provided explicitly that "This Court retains jurisdiction of this cause to amend or modify this decree or to issue such further orders as may be necessary and appropriate." 275 F. Supp. at 857.

In Aaron v. McKinley, E.D.Ark.1959, 173 F. Supp. 944, aff'd sub nom. Faubus v. Aaron, 1959, 361 U.S. 197, 80 S.Ct. 291, 4 L.Ed.2d 237, the plaintiffs were permitted to file a supplemental complaint attacking legislation enacted while an appeal from a final order of the trial court was pending. The new legislation was designed to supplant that held invalid by the district court and was signed into law on the same day the Supreme Court handed down its decision disposing of the appeal. The Court in Bush v. New Orleans Parish School Bd., E.D.La. 1960, 187 F.Supp. 42, aff'd per curiam, 1961, 365 U.S. 569, 81 S.Ct. 754, 5 L.Ed.2d 806, granted the plaintiffs leave to file a supplemental complaint and add additional defendants after a notice of appeal from the decree of the trial court had been filed. Finally, Griffin v. County School Bd. of Prince Edward County, 1964, 377 U.S. 218, 84 S.Ct. 1226, 12 L.Ed.2d 256, supports our conclusion. After a reversal of the district court's original

judgment and a remand to that court by the Fourth Circuit in Allen v. County School Bd. of Prince Edward County, 4 Cir. 1959, 266 F.2d 507, the district court entered a permanent injunction against racial discrimination in the operation of the Prince Edward County school system. Both a supplemental complaint and an amended supplemental complaint were entertained by the court subsequent to issuance of the injunction. The supplemental pleadings added new defendants and sought an order preventing the distribution of tuition grants to pupils attending private segregated schools. The Supreme Court approved the filing of the supplemental pleadings in the following language:

> The amended compaaint thus was not a new cause of action but merely part of the same old cause of action arising out of the continued desire of colored students in Prince Edward County to have the same opportunity for state-supported education afforded to white people, a desire thwarted before 1959 by segregation in the public schools and after 1959 by a combination of closed public schools and state and county grants to white children at the Foundation's private schools. Rule 15(d) of Federal Rules of Civil Procedure plainly permits supplemental amendments to cover events happening after suit, and it follows, of course, that persons participating in these new events may be added if necessary. Such amendments are well within the basic aim of the rules to make pleadings a means to achieve an orderly and fair administration of justice. 377 U.S. at 226-27.

II.

Act 99 (LSA-R.S. 17:2971-2981) was enacted by the State of Louisiana on June 15, 1967. It was to be put into operation only if and when the earlier grant-in-aid legislation was invalidated by this court.[4] The Act creates the Louisiana Education Commission for Needy Children and authorizes the Commission to disburse tuition grants to "private non-sectarian elementary or secondary school[s]" for children attending such schools within the state. The Commission is composed of the Lieutenant Governor, the Secretary of State, and the Treasurer, ex officio. The Director James D. Fountain, appointed by the Commission, had formerly served as Director of the Louisiana Financial Assistance Commission--the commission set up under the former tuition-grant statute; the Commission established its offices in the same Baton Rouge and New Orleans Locations where the old Financial Assistance Commission had been located.

Facially, the purpose of Act 99 is set out in Section 2, LSA-R.S. 17:2972, as follows:

> The Legislature of Louisiana, mindful of the increase in juvenile delinquency, school dropouts and juvenile crime rates; and mindful that the parent, not the States of Louisiana, shall be the determining force which shall decide on the type of education ultimately received by the child; and mindful of the fact that many parents enroll their children in public education facilities even though they have dispositions or considerations against doing so,

> because they lack the finances which would enable them not to do so; and mindful that such dispositions and considerations are passed from the parent to the child, resulting in possible juvenile delinquency, school dropouts and juvenile crime, hereby declares that it is the policy of this state to provide financial aid scholarships to needy children enrolled in private nonsectarian elementary and secondary schools located in this state whose parents choose not to enroll said children in the public education facilities of this state because of such dispositions and considerations.

The amount of tuition grant is computed by reference to a sliding scale in Section 5(C), LSA-R.S. 17:2975(C), which has as variables the net income of and number of dependents in the family of the recipient. The maximum amount that can be received on behalf of any student is $350 for a school year (Act 147 provided for a maximum of $360), and the total amount of tuition grants during any fiscal year is limited by the statute to $35,000,000.[5]

The primary differences between Act 147 of 1962 and Act 99, then, are the statutory language of purpose and the coordination between financial need and amount of assistance in the latter. Because we consider these distinctions merely superficial, we find Act 99, like Act 147, unconstitutional. As we have often repeated,

> Irrespective of the terms of a statute, particularly in the area of racial discrimination, courts must determine its purpose as well as its substance and effect. . . . "[A]cts generally

lawful may become unlawful when done to accomplish an unlawful end." Poindexter II, 275 F.Supp.at 837.[6]

III.

A. The purpose and motive for enactment of Act 99 must be considered through the same approach used in our analysis of Act 147--"in the light of its history and present setting". Poindexter II, 275 F.Supp.at 839; see United States v. Louisiana, E.D.La. 1963, 225 F.Supp. 353, 363, aff'd, 1965, 380 U.S. 145, 85 S.Ct. 817, 13 L.Ed. 2d 709; Lee v. Macon County Bd. of Educ., M.D.Ala. 1967, 458 F.Supp. 458, 476. We do not find it necessary to repeat that relevant history outlined in our earlier opinion, 275 F.Supp. at 838-45; we merely adopt our conclusion regarding this issue from that decision:

> Open legislative defiance of desegregation orders shifted to subtle forms of circumvention--although some promiment sponsors of grant-in-aid legislation have been less than subtle in their public expression. But the changes in means reflect no change in legislative ends. 275 F. Supp. at 845.

Act 99 is indeed more sophisticated than Act 147; more so also than the two earlier Louisiana grant-in-aid laws, Act 258 of 1958 and Act 3 of 1960.[7] But, as the Supreme Court said in Lane v. Wilson, 1939, 307 U.S. 268, 275, 59 S.Ct. 872, 83 L.Ed. 1281, the Constitution "nullifies sophisticated as well as simple-minded modes of discrimination." See also Smith v. Texas, 1940, 311 U.S. 128, 132, 61 S.Ct. 165 85 L.Ed. 84.

Openly acknowledging that Act 99 was a "stand-by" grant program to be implemented only if Act 147 were declared unconstitutional,[8]

the sponsors of the bill were nonetheless careful with their floor statements in its support.[9] Despite this, it appears clear that Act 99 was carefully tailored in its journey through the legislature to avoid too much state involvement in the maintenance of private schools (so that the bill would not "come under the Fourteenth Amendment and the Federal Government . . . again control the private schools"), while still sufficiently supporting private schools as an alternative to a public system only recently subject to more stringent desegragation guidelines.[11] See United States v. Jefferson County Bd. of Educ., 5 Cir. 1966, 372 F.2d 836, aff'd en banc, 1967, 380 F.2d 385.

Act 99 reflects concern of the legislature that "many parents enroll their children in public education facilities even though they have dispositions or considerations against doing so". Section 2. When viewed in the context of the facts presented in our earlier opinion and the circumstances reflected in our observations above, it is clear that the legislature was recognizing that many parents would not want to enroll their children in desegregated public schools. This provision is similar to that in the Alabama tuition-grant statute that based eligibility for a grant on the parent's judgment that the child's attendance at public school would be detrimental to the child's "physical and emotional health". Striking down Alabama's statute, the court in Lee v. Macon County Bd. of Educ., M.D. Ala. 1967, 267 F. Supp. 458, 477, looked at the purpose and effect of the statute and concluded that eligibility for tuition grants turned "on the parent's dissatisfaction with sending his child to a desegregated public school." It determined that in the final analysis this legislation was part of "a concerted effort to establish and support

a separate and private school system for white students."

The defendants point to juvenile delinquency as the evil the grant-in-aid statute is designed to remedy. They have not coordinated their arguments on this issue, however, for they tell us on the one hand that public schools are the hotbed of juvenile delinquency--necessitating maintenance of private schools as retreats for our bright young citizens--and on the other hand that private schools function usefully to drain off potential troublemakers and to give special treatment to them that cannot be found in public schools. In essence, this juvenile delinquency argument is grounded upon a feeling that the state should establish an alternative segregated school system for white students because of an alleged community hostility toward and alleged physical altercations resulting from public school desegregation. The excuse that desegregation will endanger public safety has been given time and again and in many contexts; invariably the Supreme Court and lower courts have brushed it aside. Fifty years ago, in Buchanan v. Warley, 1917, 245 U.S. 60, 81, 38 S.Ct. 16, 62 L.Ed. 149, the Supreme Court said:

> It is urged that this proposed segregation will promote the public peace by preventing race conflicts. Desirable as this is, and important as is the preservation of the public peace, this aim cannot be accomplished by laws or ordinances which deny rights created or protected by the Federal constitution.

Ten years ago, in Cooper v. Aaron, 1958, 358 U.S. 1, 16, 78 S.Ct. 1399, 3 L.Ed.2d 5, the Court repeated the quotation from Buchanan, preceeding it with:

> The Constitutional rights of respondents are not to be sacrificed or yielded to the violence and disorder which have followed upon the actions of the Governor and Legislature. . . .

Neither the cry of juvenile delinquency, nor the plea for retarded children--black and white--can obscure the true purpose of Act 99. The defendant-intervenors' concern for the retarded children of this state, a worthy and, we believe, genuine concern, is in reality a misplaced afterthought.[12] Act 99 gives no special attention to retarded children; benefits to them from the Act are coincidental. Actually, reference to aid to retarded children, appearing in the original version of the Act, was deleted by committee amendment before its passage.[13]

B. While consideration of both purpose and effect is desirable in this case, at least one court has suggested that grant-in-aid "payments would be unconstitutional where they are designed to further or have the effect of furthering said segregation in the public schools." Lee v. Macon County Bd. of Educ., M.D.Ala. 1964, 231 F.Supp. 743, 754 (emphasis added). Courts have invalidated laws before they have gone into effect on the basis of predictions of prospective operation, e.g. Gomillion v. Lightfoot, 1960, 364 U.S. 339, 81 S.Ct. 125, 4 L.Ed.2d 709; so also have court orders been designed to alieviate effects of de facto discrimination in an education system, where there was no question of motive or purpose. Hobson v. Hansen, D.C. Cir. 1967, 269 F.Supp. 401. While purpose and motive behind Act 99 is clear, as we related above, the Act has not yet gone into operation, so actual effect cannot be ascertained.

It appears to us that the necessary effect

of Act 99 would be substantially identical to that of Act 147 of 1962. The program under Act 99 was rightfully termed a "stand-by" by its sponsors and by the Governor, for it has the same administrative personnel, the same office space, almost the annual budget. The act benefits the same schools which came into existence because of the earlier grants-in-aid. In its first days of operation the Commission for Needy Children distributed over fifteen thousand tuition-grand forms--the approximate number of student recipients of grants under the prior law. Applications were received during these first days by the Commission from approximately seventy private schools, all but one of which were schools attended by tuition-grant recipients during the past school year.[14] Our inference drawn in Poindexter II, "that the state's tuition grants were directly responsible for the founding of most of the post-Brown special schools and that these schools continue to exist because of the state's educational policy of segregation", still stands. Poindexter II, 275 F. Supp. at 848.

> The inevitable effect of the tuition grants was the establishment and maintenance of a state-supported system of segregated schools for white children, making the state a party to organized private discrimination. . . . The tuition grants damage Negroes by draining students, teachers, and funds from the desegregated public school system into a competitive, segregated "quasi-public" school system. The stamp of State approval of "white" schools perpetuates the open humiliation of the Negro implicit in segregated education. 275 F.Supp. at 845, 851.

* * * * * *

In accordance with the findings of fact and conclusions of law in the foregoing opinion, it is hereby ordered that the defendant Louisiana Education Commission for Needy Children, its members, officers, agents, servants, employees and successors in office, and all those who are acting or may act in concert or participation with them, are hereby restrained, enjoined, and prohibited from enforcing or seeking to enforece by any means the provisions of Act 99 of the 1967 Session of the Louisiana Legislature.

This Court retains jurisdiction of this cause to amend or modify this decree or to issue such further orders as may be necessary and appropriate.

The costs incurred in this proceeding to date are hereby taxed against the defendants.

s/ John Minor Wisdom
UNITED STATES CIRCUIT JUDGE

s/ Robert A. Ainsworth
UNITED STATES CIRCUIT JUDGE

s/ Herbert W. Christenberry
UNITED STATES DISTRICT JUDGE

BRYAN POINDEXTER, ET AL
vs.
LOUISIANA FINANCIAL ASSISTANCE
COMMISSION, ET AL.
NO. 14,683
CIVIL ACTION
SECTION "A"

FOOTNOTES

1/ See Poindexter v. Louisiana Financial Assistance Commission, E.D.La. 1967, 275 F. Supp. 833, 841-45.

2/ In our first opinion, Poindexter I, we dealt with the procedureal aspects of the case, holding that the plaintiffs had standing to sue, that the defendants were properly joined, and that a three-judge court was proper under the allegations of the complaint. Poindexter v. Louisiana Financial Assistance Comm'n, E.D.La. 1966, 258 F.Supp. 158. Poindexter II, cited in the text, is our decision on the merits of the complaint.

3/ The Commission voluntarily stopped processing applications after our order.

4/ It was termed "stand-by" legislation by its supporters in the legislature, and in Poindexter II we observed that at the time Act 99 was "waiting in the wings". 275 F. Supp. at 844.

5/ The maximum expenditure under Act 147 was $300,000 a month. Under Act 147 payments were to be drawn from the Education Expense Grant Fund, established by transfers from the Public Welfare Fund. Disbursements under Act 99 are to be made directly from the Public Welfare Fund.

6/ Accord, Hall v. St.Helena Parish School Bd., E.D.La. 1961, 197 F.Supp.649; Gomillion v. Lightfoot, 1960, 364 U.S. 339, 81 S.Ct. 125, 4 L. Ed.2d.110; United States v. Louisiana, E.D.La. 1963, 225 F.Supp. 353, aff'd, 380 U.S. 145, 85 S. Ct. 817, 13 L.Ed. 2d 709.

7/ Those acts were held unconstitutional in Bush v. Orleans Parish School Bd., E.D. La. 1960, 187 F.Supp. 42, and in Hall v. St.Helena Parish School Bd., E.D.La. 1961, 197 F.Supp.649, Aff'd per curiam, 368 U.S. 515, 82 S.Ct. 529, 7 L.Ed.2d 521.

8/ The New Orleans Times-Picayune, May 30, 1967; The New Orleans States-Item, May 29, 1967; The New Orleans Times-Picayune, May 31, 1967; The New Orleans States-Item, May 31, 1967.

9/ See, e.g., the acknowledgement of Senator E. W. Gravolet, Jr., sponsor and Senate floor manager, while arguing against several proposed amendments to Act 99, that "Anything I say at this microphone can be used". The New Orleans Times-Picayune, June 2, 1967.

10/ Statement of Senator Gravolet in objection to amendments requiring private schools supported under Act 99 to meet the same curriculum and other standards as public schools. The New Orleans Times-Picayune, June 2, 1967. See also the statement of Representative John Garrett in objection to a proposed amendment that would have required schools attended by tuition grant recipients to have recognition and approval of the State Board of Education. The New Orleans Times-Picayune, May 30, 1967.

11/ The New Orleans Times-Picayune, May 23, 1967; The New Orleans Times-Picayune, May 31, 1967.

12/ The rationalizations for passage of Act 99 appear in part to be drawn from the citicism of the court in Lee v. Macon County bd. of Educ., M.D. Ala. 1967, 267 F. Supp. 458, that the Alabama tuition-grant statute could be explained on no "rational basis".

> The statute does not manifest state concern for equalizing the opportunity of all children, including the poor, to attend private schools, for the statute does not require a showing of financial need. Nor does the statute exhibit state concern for improving the educational opportunities of special classes of students--those who may be gifted or those who may be handicapped.

13/ The New Orleans Times-Picayune, May 26, 1967.

14/ The additional school was not in existence prior to the present school year. Only nine schools receiving grants under the prior statute have not reapplied under Act 99; these must, at least in part, represent some of the established, elite private schools whose students' families could not qualify under the financial need section of the Act.

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No. 284

In the Supreme Court of the United States

OCTOBER TERM, 1968

LOUISIANA EDUCATION COMMISSION FOR NEEDY CHILDREN, ET AL., APPELLANTS

v.

BRYAN POINDEXTER, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

MOTION TO AFFIRM

ERWIN N. GRISWOLD,
Solicitor General,
STEPHEN J. POLLAK,
Assistant Attorney General,
Department of Justice,
Washington, D.C. 20530.

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MOTION TO AFFIRM

Pursuant to Rule 16(1)(c) of the Rules of this Court, the United States moves that the judgment of the district court entered on March 19, 1968, be affirmed.

OPINIONS BELOW

The opinion of the three-judge district court and the order from which this appeal is taken (J.S. Appendix B) are not yet reported. This Court's denial of appellants' motion for leave to file a petition for a writ of prohibition is reported at 390 U.S. 939. Two earlier opinions of the district court in related cases are reported at 258 F. Supp. 158 (*"Poindexter I"*)

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and 275 F. Supp. 833 (*"Poindexter II"*), affirmed, 389 U.S. 571.

JURISDICTION

The order of the three-judge district court was entered on March 19, 1968. A notice of appeal was filed on April 19, 1968. The Jurisdictional Statement was filed on July 12, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. 1253.

QUESTION PRESENTED

Whether the district court was correct in holding that Act 99 of the 1967 Louisiana Legislature providing financial aid for tuition to attend private schools is unconstitutional as a further attempt by the legislature to provide State support for a system of racially segregated schools.

STATEMENT

The original complaint in this action was filed on June 29, 1966, as a class action on behalf of Negro school children in Louisiana. The plaintiffs challenged the constitutionality of Act 147 of the 1962 Session of the Louisiana Legislature (L.S.A.–R.S. § 17: 2951–2959) which provided tuition grants for students attending certain private schools. The United States subsequently intervened as a party plaintiff pursuant to Section 902 of the Civil Rights Act of 1964 (42 U.S.C. 2000h–2) alleging that Act 147 had been designed to provide segregated schools for white pupils and that its operation resulted in the establishment of a State-supported segregated school system in Louisiana.

After a full hearing on the merits, the district court held Act 147 unconstitutional and enjoined its

further enforcement. 275 F. Supp. 833. The court found (*id.* at 835) that "[t]he purpose and natural or reasonable effect of this law are to continue * * * segregated, privately operated schools for white children," and that it was unconstitutional because it amounted to "affirmative and purposeful state aid promoting private discrimination." This Court affirmed that judgment. (389 U.S. 571.)

On June 15, 1967, the State of Louisiana enacted Act 99, which was to go into effect if and when the earlier tuition-grant legislation was invalidated. Act 99 authorizes State tuition grants to private non-sectarian elementary and secondary schools attended by children who are eligible to attend public schools, and creates the Louisiana Education Commission for Needy Children to administer the program. The amount of the grant varies both according to net income and according to the number of dependents. It provides a maximum grant of $350 on behalf of each student for a school year. The Act authorizes a transfer of amounts not to exceed $3,500,000 during any fiscal year from the Public Welfare Fund to the schools.

After the new statute went into effect, the United States moved to file a supplemental complaint under Rule 15(d) of the Federal Rules of Civil Procedure, adding the Louisiana Education Commission for Needy Children and its members as defendants and asking that Act 99 be declared unconstitutional and the defendants enjoined from carrying it out. The district court held that the complaint was properly

filed and considered the claim on the merits (J.S. Appendix B, pp. 3–5).

Referring to the history of grant-in-aid legislation in Louisiana detailed in its opinion in *Poindexter II*, the court said (J.S. Appendix B., p. 8):

> Act 99 is indeed more sophisticated than Act 147; more so also than the two earlier Louisiana grant-in-aid laws, Act 258 of 1958 and Act 3 of 1960. But * * * the Constitution "nullifies sophisticated as well as simple-minded modes of discrimination." * * *

The district court then quoted from its opinion in *Poindexter II* (J.S. Appendix B., p. 12):

> The inevitable effect of the tuition grants was the establishment of maintenance of a state-supported system of segregated schools for white children, making the state a party to organized private discrimination. * * * The tuition grants damage Negroes by draining students, teachers, and funds from the desegregated public school system into a competitive, segregated "quasi-public" school system. The stamp of State approval of "white" schools perpetuates the open humiliation of the Negro implicit in segregated education. 275 F. Supp. at 845, 851.

The court also found that "[t]he purpose of Act 99 of 1967, like the purpose of its predecessors, is to give state aid to private discrimination. * * * The continuing effect is to endanger the public school system and equal educational opportunities for Negroes" (J.S. Appendix B, p. 2). It concluded, "Act 99 must go the way of its predecessors. Its

'unlawful end and necessary effect' is 'to establish and maintain a system of segregated schools for white children, in violation of the equal protection clause' " (J.S. Appendix B, p. 2).

ARGUMENT

1. The district court properly concluded that Act 99 was nothing more than the fourth in a series of tuition-grant statutes enacted by the Louisiana Legislature to encourage and support racially segregated private schools which white students in the State could attend in place of the desegregated public schools. The striking similarities between the program established by Act 99 and that created by its unconstitutional predecessors (see J.S. Appendix B, p. 12) and the fact that Act 99 was characterized as a "stand-by" for the earlier legislation by its sponsors more than adequately support the district court's conclusion.

2. It was proper for the court below to consider the full facts and circumstances surrounding enactment of the legislation in determining its constitutionality. See, *e.g.*, *Grosjean* v. *American Press Company*, 297 U.S. 233; *Miller* v. *Milwaukee*, 272 U.S. 713; *Griffin* v. *County School Board of Prince Edward County*, 377 U.S. 218, 231; *Cooper* v. *Aaron*, 358 U.S. 1; *Louisiana* v. *United States*, 380 U.S. 145. Appellants' claim that the district court erred in considering public statements made by legislators or newspaper reports concerning the challenged legislation was made and rejected in *Poindexter II*, which was summarily affirmed by this Court. 389 U.S. 571. Statements by

sponsors of legislation are, of course, traditionally relied upon in assessing a statute's legislative history. *Humphrey's Executor* v. *United States,* 295 U.S. 602; *Standard Oil Company* v. *United States,* 221 U.S. 1. The newspaper accounts, accompanied by the testimony of the authors as to their presence at the event and the accuracy of their reports, were properly admitted since Louisiana maintains no official records of legislative debates or committee proceedings and no verbatim transcript is available. See, *e.g., United States* v. *Louisiana,* 225 F. Supp. 353 (E.D. La.), affirmed, 380 U.S. 145; *Hall* v. *St. Helena Parish School Board,* 197 F. Supp. 649 (E.D. La.), affirmed *per curiam,* 368 U.S. 515; *Davis* v. *Schnell,* 81 F. Supp. 872 (S.D. Ala.), affirmed *per curiam,* 336 U.S. 933.

3. Appellants' assertion that the district court was personally biased against them was impliedly rejected by this Court in denying appellants leave to file a petition for a writ of prohibition. 390 U.S. 939. In any event, the alleged bias relates not to personal prejudice of any kind but to remarks assertedly made by the judges in ruling on the issues in the case. Adverse rulings are not grounds for a motion to disqualify. *Ex Parte American Steel Barrel Company,* 230 U.S. 35, 43–44.

4. The district court was correct in rejecting the "preponderant support" standard adopted in *Griffin* v. *State Board of Education,* 239 F. Supp. 560 (E.D. Va.), as it had in *Poindexter II.* The record in this case established that the State had deliberately devised the various forms of tuition grants to support segregated schools. It cannot avoid the consequences of that

support simply because it amounts to less than fifty percent of the schools' costs.

5. The district court was also correct in rejecting, again for the second time, the appellants' contention that the definition of "public school" contained in Title IV of the Civil Rights Act of 1964 controlled the outcome of this proceeding. By its own terms, that definition is applicable only to Title IV. It does not purport to define every type of institution with which the State may be unconstitutionally involved in racial discrimination.

CONCLUSION

For the reasons stated, the judgment of the court below should be affirmed.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

STEPHEN J. POLLAK,
Assistant Attorney General.

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Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, THREE JUDGE COURT

APPELLANTS' BRIEF OPPOSING APPELLEE'S MOTION TO AFFIRM

LEANDER H. PEREZ
1806 Commerce Building
New Orleans, Louisiana

LUKE A. PETROVICH
P. O. Box 200
Buras, Louisiana
Counsel for Appellants

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Appellees.

APPELLANTS' BRIEF OPPOSING APPELLEE'S MOTION TO AFFIRM

Appellee, United States of America, filed a Motion to Affirm judgment sought to be reviewed on appeal from a Three Judge Court pursuant to Rule 16 (1) (C) of the Rules of this Court. Appellants now file a brief opposing said Motion to Affirm, pursuant to Rule 16 (4) of the Rules of this Court.

OPINIONS BELOW

The opinion of the Three Judge District Court was on the merits and on Defendants' Motion to Dismiss, after full trial. It is cited as Civil Action No. 14683, Docket of the Eastern District Court, New Orleans Division, decided and entered March 19, 1968. The

opinion is not reported but a copy thereof is in Appendix B, of Appellants' jurisdictional statement filed herein. This Court's denial of Appellants' Motion for leave to file petition for writ of prohibition based on a Motion and Affidavit to recuse the Lower Court Judges, is reported in 390 U. S. 939. The merits of the Motion to Recuse as well as all of the other matters herein are still in issue in this appeal.

JURISDICTION

The jurisdiction of this Court is based on an appeal under U.S.C. Title 28, Section 1253, from an order and opinion of a Three Judge District Court, entered March 19, 1968. A notice of appeal was filed April 19, 1968 and jurisdictional statement was filed on July 12, 1968. The questions presented and the statement of the case have already been set out in Appellants' jurisdictional statement.

ARGUMENT

1. The Appellee's Motion to Affirm must be denied on the ground that from the judgment sought to be reviewed on appeal it is manifest that the questions on which the decision of the cause depends are extremely substantial as to demand further argument. The case must be briefed and reviewed and is too substantial to be simply decided on a Motion to Affirm. The Act and the entire record of the case clearly show that there is no purpose and there is no reasonable effect of the Act to continue segregated, privately operated schools for white children. Nor does the act or any part of the record show an affirmative and purposeful State aid promoting private discrimination. The District Court

and the United States of America, of course, disagree with these conclusions. The defendants now request this Honorable Court to settle these issues not through the mechanics of a Motion to Affirm, but by a complete and rightful appeal, with the submission of briefs and oral arguments and consideration by all of the Justices of this Court.

2. The Appellee's Motion to Affirm lists several misstatements of fact. Page 3 of its Motion to Affirm states that "Act 99 authorizes State tuition grants to private, non sectarian, elementary and secondary schools attended by children who are eligible to attend public schools —". The Act clearly states as follows: "— to authorize said Commission to approve financial aid scholarships to children attending private, non sectarian, elementary and secondary schools, located in this State". There is nothing in the Act or in the record that shows that these children are eligible to attend public schools. The record, in fact, clearly shows that many of the children are not eligible to attend public schools because they have been forced to drop out of public schools, either for personal or psychological reasons, they are retarded children, or they have been expelled from public school by the public school authorities. The purpose of Act 99 is to provide financial aid scholarships to these children in order to help them attend some educational institution and to help correct or avoid juvenile delinquency, school drop outs, and juvenile crime. The Act clearly states "to approve financial aid *to children* attending private, non sectarian, elementary and secondary schools, located in the State". There is no authorization for State tuition grants to private, non sectarian, elementary and secondary schools. The Motion to Affirm also states that "Act 99 was characterized as

a 'stand by" for the earlier legislation by its sponsors more than adequately supports the Court's conclusion" that Act 99 was nothing more than a series of tuition grant statutes enacted by the Louisiana Legislature to encourage and support racially segregated private schools which white students in the State could attend in place of desegrated public schools. This statement and conclusion is gratuitous on the part of the plaintiff and the Lower Court. A reading of Act 99 and a perusal of the record in this case shows that Act 99 is in no way dependent on any other legislative Act, especially Act 147 of 1962. Act 99 is clearly independent within itself and the funds for the implementation of said Act come out of welfare funds to combat school drop outs, juvenile delinquency and juvenile crime which is all within the police power of the State. The Act is clear and the record so substantiates, that there is nothing in the Act the purpose of which is the natural or reasonable effect to continue segregated privately operated schools for white chidlren or is a purposeful State aid program promoting private discrimination. There is nothing in the Act or in the record which substantiates the conclusion that the scholarship aid under Act 99, which is an amount not to exceed $3,500,000.00 out of welfare funds will damage negroes by draining students, teachers and funds from the desegrated public school system into a competitive segregated school system. In fact, the record clearly shows that there is a total of 1,082,576 school age children in Louisiana, with 789,412 of these students attending public schools and 151,697 attending non public schools, or a total of 941,109 school age children attending schools, leaving 141,467 school age children unaccounted for and not attending either public or non-public schools. The main purpose of Act 99, with the meager allotment of $3,500,000.00

for any fiscal year, is to provide for these 141,467 school age children who are either staying at home or running the streets, are school drop outs, and are more apt to become involved in juvenile delinquency and juvenile crime. Furthermore, the conclusions of the United States and the Three Judge Lower Court that it will "shatter to bits the public school system" or will "endanger the public school system and equal opportunities for negroes" are false. The Act and the record clearly refute these conclusions. As stated, there are 789,412 children attending public schools in Louisiana. There is a total investment in public school sites, buildings and equipment of $734,794,952.14, and the expenditure for the education of these public school children by the State of Louisiana for the year 1965-1966 amounted to $387,545,312.71. It is idiotic for the Federal attorneys to contend that Act 99, which provides scholarship aid aimed at combatting drop outs, juvenile delinquency and juvenile crime *by helping some 141,467 school age children who are not attending either public schools or non public schools*, with a maximum expenditure of $3,500,000.00 out of the welfare funds and not education funds, will destroy the vast public school system of the State of Louisiana, which has an annual expenditure of over $387,000,000.00, a figure over 110 times larger than the funds provided by Act 99.

The Act provides additional educational opportunities to 141,467 negro and white children who are unaccounted for and who are not attending either public or non public schools. The program is based on a beneficial, racially neutral policy. The United States of America, in face of the gigantic and still growing crime rate among our juveniles throughout the country, which the record in

this case confirms as staggering, should be encouraging this type of legislation instead of trying to declare it unconstitutional simply because by implication and by suggestion, and without evidence, fact or logic, it claims that the Act discriminates against public education and against negroes. The mere reading of Act 99 will show the differences and lack of similarities between its program and the programs created by any previous Louisiana legislation which has come before the Federal Courts. This basic question is so substantial that it must be submitted to this Court for further argument.

3. The other question that is so substantial is whether newspaper articles and opinions are the best evidence as opposed to direct statements, documents and living witnesses. The Appellee states on page 5 of its Motion to Affirm that "it was proper for the court below to consider the full facts and circumstances surrounding enactment of the legislation in determining its constitutionality." The Appellants have no quarrel with that proposition. We maintain that the *Court did not consider the full facts and circumstances;* that it simply took newspaper articles, and no other evidence, to come to its conclusion and opinion. The Appellants contest the right of the Court to take newspaper reports regarding alleged statements of legislators when the legislators themselves were available and disregard a statement of legislative intent filed in the record, which was signed by twelve legislators who are proponents of the bill.

The Appellee claims that this argument on the part of the Appellant regarding newspaper clippings as evidence was rejected in Poindexter No. II, 389 U. S. 571, which was similarly affirmed by this Court. Appellants

maintain that no real appeal was ever granted the other defendants before the Supreme Court of the United States. The matter was settled by a Motion to Affirm and it is the desire of Appellees herein to again settle these vital questions by a Motion to Affirm. They cannot face this Court in briefs and in oral arguments and claim that newspaper gossip, propaganda and hearsay is better evidence than living witnesses, certified documents and affidavits. The Court, in granting the plaintiffs the privilege of resorting to this type of evidence, clearly violated defendants' right of due process of law. Appellants do not quarrel with Appellee's position that "statements by sponsors of legislation are, of course, traditionally relied on in assessing a statute's legislative history". A statement of legislative intent was filed of record but ignored by the Court. Our quarrel is that newspaper gossip and hearsay is not the best evidence, especially when contradicted by documentary evidence and by living witnesses and by the fact that the newspaper reporters, newspaper offices and editors were personally biased against the legislation involved. In fact, the authors of the newspaper articles admitted in their testimony that they were uncompromisingly against Act 99. The Appellant also points out the unreliability of newspaper articles and refers this Court to pages 23 and 24 of its jurisdictional statements. We are sure Vice President Hubert Humphrey and Attorney General Ramsey Clark appreciate the unreliability of newspaper reports and newspaper quotations of statements. For example, a statement by Attorney General Ramsey Clark in the Times Picayune of October 15, 1967 accuses the Times Picayune of misquoting him when that paper attributed statements to him concerning his possible prosecution of New Orleans District Attorney, Jim

Garrison. Vice President Hubert Humphrey accused the same New Orleans newspapers involved in this case of misquoting him when they said that he had enough zip left in him, that if he lived under conditions of certain minority groups, he would lead a full time revolt himself.

The Court quotes as its authority to accept newspaper reports and clippings as evidence the case of *Hall vs. St. Helena Parish School Board*, 197 Fed. Sup. 649 (E D La.). We point out, as we have before, that the introduction of newspaper clippings in the St. Helena case was made without any objection by counsel for the defendants, whereas, in the case at hand, objection was timely urged to such alleged evidence. Furthermore, this issue was never ruled on by this Court. Here again is a vital, substantial, extremely important issue that must be considered and heard by this Court through briefs and oral arguments and it cannot be disposed of simply through a Motion to Affirm, which may be considered by only one Justice. This matter must be considered by all of the Justices after perusal of the record and after briefs have been prepared by both sides and arguments have been completed. Without the Court's consideration of this issue, it may well be that in the future, a plaintiff, to prove his case, simply has to provide newspaper propaganda, gossip and hearsay; an ideal situation for a despotic and totalitarian State. The ironic part of the plaintiffs' case and the lower Court's decision is that no other evidence was submitted by the plaintiff other than these newspaper articles. Certainly, this question is so substantial as to warrant further briefs and arguments.

4. The Appellee maintains through implication in

its Motion to Affirm that this Court has already ruled on the question of Motion to Recuse when it rejected plaintiffs' Motion to file petition for writ of prohibition, 390 U. S. 939. Appellants feel that the Appellee is taking a lot for granted. The only issue was the leave to file a writ of prohibition to determine whether or not the trial of the case in the lower Court would continue before the Presiding Judges, and not whether or not the Motion to Recuse was proper and adequate. The defendants certainly have the right to have this Court consider the merits presented by the Motion to Recuse and to consider whether or not there was any bias or prejudice on the part of the Presiding Judges. It can equally be implied that the Presiding Judges are biased, especially since they eagerly accepted the flimsy evidence submitted by plaintiffs, and used said evidence for the basis of their opinion and at the same time, ignored substantial evidence offered by defendants. This basic question of whether the Presiding Judges were prejudiced and biased or had a bent of mind against any Louisiana legislation which benefits children not in public school cannot be discarded on a Motion to Affirm for it is manifest that this question be considered on briefs and arguments before the entire Court.

5. The Appellees allege in their Motion to Affirm that the District Court was correct in rejecting the prevailing ruling of *Griffin vs. County School Board of Prince Edward County*, 239 F. Supp. 560 (E.D. La.), because plaintiff alleges that the State has deliberately devised to issue grants to support segregated schools. This allegation is not supported by the wording of the Act itself or by any part of the record of the case. In fact, the record clearly shows to the contrary, as

previously pointed out. In any event, the basic rule of the Griffin case has been disregarded by the Lower Court and it is now a matter for this Court to decide whether or not the prevailing holding of the Griffin case is correct or whether it is to be overruled and the decision of the lower Three Judge Court is to stand. This must be decided by a complete appeal, by all the Judges of this Court, after briefs and oral argument, not by a Motion to Affirm.

Appellants maintain that no decision of this Court has held that any State action or support at all with respect to a private non integrated school is repugnant to the 14th Amendment to the United States Constitution. In fact, this Court has held to the contrary in its school bus transportation cases and its various school text book cases, even as recently as July 10, 1968 in *Board of Education of Central School District No. 1 vs. Allen*, 80 Supp. Ct. 1923 (1968). Furthermore, this matter must be considered on briefs and arguments because the Griffin case is in harmony with the Congressional definition of public schools. Title IV of Civil Rights Act of 1964, 42 U.S.C.A. 2000 (c) Sec. 401.

Matters so vitally important must not be resolved in a mere Motion to Affirm. The Appellee alleges that this argument on the part of the Appellant that the lower Court's decision is contrary to the holding in the Griffin case has already been ruled on by this Court in the Poindexter No. II case, 275 Fed. Supp. 833; 389 U.S. 576; 19 L.Ed. (2nd) 780 (1968). Appellants maintain that this issue was never considered or submitted to this Court in any case in the past through briefs on the merits and oral arguments. We urge that it be resolved in

this manner at this time by the entire Court. The defendants so urge as a matter of right.

6. The Appellee contends that the definition of public schools contained in Title IV of the Civil Rights Act of 1964 is applicable only to Title IV and it does not purport to define any type of institution with which the State might be unconstitutionally involved in racial discrimination. It is absolutely clear from the Civil Rights Act itself that a State or other local agency has a right to provide governmental funds or property to elementary or secondary educational institutions. This right has been recognized by this Court in its various school bus transportation cases and school text book cases. In fact, paragraph C of Section 401 of Public Law 88:352 says public school means: "any elementary or secondary educational institution — operated wholly or predominantly from or through the use of governmental funds or property, or funds or property derived from governmental sources." It cannot be argued that the provision was intended to apply only to Title IV or to Federal grants to public schools when the above provision specifically provides that such "public school is operated by a State, subdivision of a State, or governmental agency within a State, or operated wholly or predominantly from or through the use of governmental property or funds or property derived from a governmental source." But regardless of what the intention, the issue is at hand and it must not be resolved in a Motion to Affirm. It is so substantial as to demand briefs and oral arguments and consideration by all members of the Court.

7. Another question which is so substantial that it merits further argument, and which was not mentioned

in plaintiffs' Motion to Affirm, is whether the Court erred in granting injunctive relief to the plaintiff without plaintiffs' alleging or proving any injury or damage, irreparable or otherwise. Appellants maintain that the United States Attorney General nowhere alleged or proved any injury or damage, irreparable or otherwise, to the United States or anyone else as a result of the enactment or implementation of Act 99 of 1967, although this is a basic requirement of Rule 65 of the Federal Rules of Civil Procedure. The Supreme Court has held in *Mass. State Grange, et al vs. Benton, Attorney General of Mass., et al,* 1926, 272 U. S. 525, 527; 47 Sup. Ct. 189, 190, and in *Cavanaugh, et al vs. Looney, Attorney General of Texas, et al,* 1919, 39 Sup. Ct. 142, 143, that no injunction ought to be granted against officers of a State clothed with authority to enforce a State law in question unless in a case reasonably free of doubt and when necessary to prevent great and irreparable injury. In this case there is *serious* doubt that anyone would be hurt by Act 99, especially the public school system and the negroes of the State of Louisiana. In fact, the record clearly shows that more negroes would be helped by the enactment and implementation of Act 99 and that the public school system and the State of Louisiana would be helped in that some 141,000 children who are not now attending public or non public schools could be encouraged to attend some school and become better citizens of our State and Nation.

It follows, then, that the basic and substantial questions which merit the full consideration of this Court are in fact whether or not Act 99, 1967, Louisiana Legislature, is unconstitutional and whether or not it provides aid to educate Louisiana children on a beneficial racially neutral policy and whether the judgment of the

lower Court prohibits the State of Louisiana from alloting any aid or assistance to its children for the purpose of combatting drop outs, juvenile delinquency and juvenile crime, unless they attend public schools. Appellants maintain that Act 99, its implementation and the entire record of the case clearly refute the position of the plaintiff and the lower Court's holding. These issues, may it please the Court, are extremely substantial and demand further argument.

8. The defendants, as a matter of right, are entitled to be heard on appeal by the entire Court with briefs on the merits and oral argument. 28 U.S.C. 1253. If prohibited from so doing, they would be deprived of the fundamental and basic right of appeal granted in 28 U.S.C. 1253 and deprived of their constitutional right of due process of law as granted by the 5th Amendment of the United States Constitution. *Radio Corporation of America vs. U. S.*, 341 U. S. 412, (1950); *Ferguson vs. Skrupa*, 372 U. S. 726; 10 L.Ed. (2nd) 92; 341 Sup. Ct. 1028; 95 ALR 2nd 1347.

9. In order to afford the Appellants an appeal as provided in 28 U.S.C. 1253, the case must be submitted to the Supreme Court for review and the Appellants must be granted as a matter of statutory right an opportunity to file briefs on the issues and an opportunity to present oral arguments. Any other approach would be a deprivation of that right. A decision of this case by the Supreme Court of the United States on a Motion to Affirm, after the Appellant has filed only a jurisdictional statement as required by the Court rules, is certainly not sufficient review. The Supreme Court, in order to properly review this case, must have before it the record as it affects the issues on appeal, complete

briefs of all parties concerned, and which parties must be afforded an oportunity for oral arguments.

10. A decision by a Three Judge Court is appealable to the Supreme Court as a matter of right. *Radio Corporation of America vs. U. S. D. C. Ill. 1950,* 95 Fed. Supp. 660, Affirmed, 71 Sup. Ct. 806; 341 U S. 412; 95 L.Ed. 1062. Judge Cardoza's definition of appeal, as recorded in Webster's Third New International Dictionary says that an apeal is "to call upon or refer to another as a recognized authority for corroboration, vindication or decision." No real appeal can be effected to the Supreme Court as guaranteed by Federal statute for the resolving of the issues of this case without having presented to the appellate Court briefs and arguments on the issues by the necessary parties.

11. Whether it was wise for the State of Louisiana to enact Act 99 and whether it would be useful in combatting crime, which the lower Court denies, is not a matter to be decided by the Courts but is a matter for the Legislature of Louisiana to decide, so long as the basic constitutional rights of its citizens are not violated. *Ferguson vs. Skrupa, Supra.* The Ferguson case further held that under the system of government created by the Constitution, it is up to the Legislators, not the Courts, to decide the wisdom and utility of legislation. The Courts do not substitute their social and economic beliefs for the judgment of legislative bodies and are not concerned with the wisdom or the appropriateness of legislation.

12. Under U.S.C. Title 28, Section 1253, a judgment of a Three Judge District Court enjoining enforcement of a State statute as being in violation of the 14th

Amendment, is properly brought before the Supreme Court of the United States by appeal. This appeal is a matter of right granted not only by this Statute but by the due process clause of the 5th Amendment, and by the United States Supreme Court decisions in *Radio Corporation of America, Supra,* and the *Ferguson case,* Supra. If the Appellees contend that they have a right to file this Motion to Affirm and this Court has a right to grant said Motion to Affirm by Rule 16 C of the Supreme Court Rules, prohibiting defendant a full appeal with briefs and oral argument, then the Appellants maintain that Rule 16 C, as it applies to this case, this appeal and to appeals of this type, is unconstitutional, primarily because it violates the statutory right of appeal and thereby violates the basic right of due process of law.

If the Motion to Affirm is denied, the Appellee will still have every opportunity to properly present its case on appeal on the filing of briefs and on oral arguments. If the Motion to Affirm is granted, the defendants are deprived of an opportunity to properly present an appeal of this case by the filing of briefs and by oral arguments before the entire Court, and in essence, they will be deprived of the right of appeal granted by 28 U.S.C. 2353 and in effect denied the due process of law.

CONCLUSION

For the many reasons stated and because it is manifest that the questions on which the decision of the cause depends are extremely substantial as to need further argument, and for the further reason that if Appellee's Motion to Affirm is granted, Appellants will be deprived of the right of appeal guaranteed to them by law, the Motion to Affirm should be denied.

Respectfully submitted,

LEANDER H. PEREZ
1806 Commerce Building
New Orleans, Louisiana

LUKE A. PETROVICH
P. O. Box 200
Buras, Louisiana

Counsel for Appellants

CERTIFICATE OF SERVICE

I, Luke A. Petrovich, one of the Attorneys for the Louisiana Education Commission for Needy Children, et al, Appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 23rd day of August, 1968, I served copies of the foregoing Appellants' Brief Opposing Appellee's Motion to Affirm, upon parties hereto by mailing copies thereof to the Attorneys listed below by United States Mail, first class, (air mail where applicable), postage prepaid.

Solicitor General
Washington D. C. 20530

For the United States of America, Plaintiff-Intervenor

Hon. Louis Lacour, U. S. Attorney
500 St. Louis Street
New Orleans, Louisiana

For the United States of America, Plaintiff-Intervenor

Hugh W. Fleischer
Attorney, Dept. of Justice
1723 Masonic Temple Bldg.
New Orleans, Louisiana

For the United States of America, Plaintiff-Intervenor

A. P. Tureaud, Esquire
A. M. Trudeau, Esquire
1821 Orleans Avenue
New Orleans, Louisiana

Attorneys for Bryan Poindexter and other minors, original plaintiffs

Charles H. Jones, Jr., Esquire
10 Columbus Circle
New York, New York

Attorneys for Bryan Poindexter and other minors, original plaintiffs

Cy Courtney, Esquire
National Bank of Commerce Building
New Orleans, Louisiana

Attorneys for Mrs. Thelma Deamer, et al, defendant-intervenors

Richard Cadwallader, Esquire
Louisiana National Bank Bldg.
Baton Rouge, Louisiana

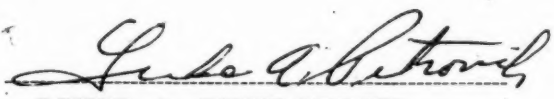
Attorneys for Mrs. Thelma Deamer, et al, defendant-intervenors

Sidney J. Parlongue, Esquire
National Bank of Commerce Bldg.
New Orleans, Louisiana

Attorney for Garden District Academy

Walter E. Doane, Esquire
Room 205, Southern Marine and Aviation Bldg.
New Orleans, Louisiana

Attorney for Ninth Ward Elementary School and Armond J. Duvio and Carrollton Elementary School Association, defendants



LUKE A. PETROVICH
Attorney at Law
P. O. Box 200
Buras, Louisiana

SUPREME COURT OF THE UNITED STATES

October Term, 1968.

LOUISIANA EDUCATION COMM'N FOR NEEDY CHILDREN ET AL. *v.* POINDEXTER ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA.

No. 284. Decided October 14, 1968.

PER CURIAM.

The motion to affirm is granted and the judgment is affirmed.